

LIFE ESIDIMENI ARBITRATION

**HELD AT: EMOYENI CONFERENCE CENTER, 15 JUBILEE ROAD,
PARKTOWN, JOHANNESBURG**

DATE: 26th OCTOBER 2017 DAY 13

5

DAY 13 SESSION 1 – 4.

BEFORE ARBITRATOR – JUSTICE MOSENEKE

10

WITNESSES: MAJOR GENERAL JOHNSON

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SESSION 1

ARBITRATOR JUSTICE MOSENEKE: You may be seated. Advocate Ngutshana?

ADV PATRICK NGUTSHANA: Thank you Justice Moseneke. We will introduce
5 this morning a further witness by the name of Major General Charles Johnson from the SAPS to take us through the process of investigating this death.

ARBITRATOR JUSTICE MOSENEKE: In which language do you want to testify Major General?

MAJOR GENERAL JOHNSON: English.

10 **ARBITRATOR JUSTICE MOSENEKE:** In English. Would you ... [interjects]

MAJOR GENERAL CHARLES JOHNSON: English would be ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Yes, would you put your full names on record.

MAJOR GENERAL CHARLES JOHNSON: I'm Charles Johnson.

15 **ARBITRATOR JUSTICE MOSENEKE:** Major General Johnson, do you swear that the evidence you are about to give will be the truth, nothing but the truth and if so please raise your right hand and say so help me God.

MAJOR GENERAL CHARLES JOHNSON: So help me God.

ADV PATRICK NGUTSHANA: Thank you Justice Moseneke. Mr Johnson, where
20 are you currently employed?

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ARBITRATOR JUSTICE MOSENEKE: Let's stay with the title of the witness.

ADV PATRICK NGUTSHANA: Major General Johnson, could you please for the record tell us where are you employed and what is your title currently?

MAJOR GENERAL CHARLES JOHNSON: I am a member of the South African
5 Police Service. I currently hold the rank of Major General and I am the Component Head for Crime Investigation Service within the division Detective Service at the police headquarters in Pretoria.

ADV PATRICK NGUTSHANA: So it will be correct that I should address you as Major General Johnson?

10 **MAJOR GENERAL CHARLES JOHNSON:** I don't have an issue how I'm being address Justice, it's fine.

ADV PATRICK NGUTSHANA: Thank you.

ARBITRATOR JUSTICE MOSENEKE: No, you are here in a particular capacity and we stick to that.

15 **MAJOR GENERAL CHARLES JOHNSON:** Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: I'm here to in a particular capacity. When I play golf with my mates they call we differently, but here we have an official business and I think we'll stick to your official title.

MAJOR GENERAL CHARLES JOHNSON: If you so please Justice.

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ADV PATRICK NGUTSHANA: Thank you Major General Johnson. Major General Johnson, we are dealing here with a matter of patients who died during a project called the Gauteng Marathon Project. Are you aware of that?

MAJOR GENERAL CHARLES JOHNSON: Yes, Justice. I became aware of the
5 magnitude of this deaths from Life Esidimeni after the Ombudsman's report was released.

ADV PATRICK NGUTSHANA: Yes, any involvement that the SAPS may have had you are aware of?

MAJOR GENERAL CHARLES JOHNSON: Justice, before the release of the
10 report there were four cases investigated at different police stations by different investigating officers.

ADV PATRICK NGUTSHANA: And who had opened those four different cases?

MAJOR GENERAL CHARLES JOHNSON: It was deaths that was reported at
the police stations after the deceased bodies were admitted at government
15 mortuaries, but after release of the Ombudsman's report, three political parties went to Randfontein police station and registered criminal cases. That was the EFF, the ANC Youth League and the DA. I then on the 24th of February arranged and had a meeting with Dr Lebetse at the Gauteng Department of Health where I requested information ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Shall we add the year Major General, 24
20 February?

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MAJOR GENERAL CHARLES JOHNSON: This year, 2017.

ARBITRATOR JUSTICE MOSENEKE: 2017, thank you.

MAJOR GENERAL CHARLES JOHNSON: Where I requested information relating to the Life Esidimeni matter. Now Dr Lebete was or indicated to me that he
5 would assist and that I would be presented with the information within a week. After some time, I'm not sure how long it is, when I phoned the doctor again, he informed me that I should rather do a written application for the information to the DG.

ARBITRATOR JUSTICE MOSENEKE: And what was Dr Lebete's position within the department then?

10 **MAJOR GENERAL CHARLES JOHNSON:** I'm not sure Justice, but I was referred to him. So I had a meeting. He knew of the incidents, he knew of the records that were in the department's possession and he indicated that he would cooperate and assist with us. So I was surprised after a while that when I contacted him, he indicated that I should rather work in writing through the office of the DG,
15 which I never did, and on the 28th of February 2017 I had a meeting with the Health Ombudsman, Professor Magoba, where we discussed this matter in his office or at his offices. He provided me with documentary evidence or information containing names of deceased as well as a copy of his report.

ADV PATRICK NGUTSHANA: And were these, the commencement of
20 investigations on these matters or what were you doing?

MAJOR GENERAL CHARLES JOHNSON: Can you just repeat that?

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ADV PATRICK NGUTSHANA: Was this a commencement of investigations on these deaths report or cases reported at Randfontein or what have you been doing when you approached these individuals?

MAJOR GENERAL CHARLES JOHNSON: Justice, on the 19th of May 2017 ...
5 [interjects]

ARBITRATOR JUSTICE MOSENEKE: Yes.

MAJOR GENERAL CHARLES JOHNSON: Because of the magnitude of the investigation and because four different investigating officers were investigating cases, I decided that it would be in our best interest and in the interest of the
10 families of the deceased that we establish a task team, an investigating task team. Initially I took the four people of Gauteng and I gave three, two members from my office to it to start their investigation task team. So they were five. Three from Gauteng and two from my office, and I gave them a time frame of ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: And your office would have been the head
15 office?

MAJOR GENERAL CHARLES JOHNSON: The head office.

ARBITRATOR JUSTICE MOSENEKE: The head office, yes.

MAJOR GENERAL CHARLES JOHNSON: That's right.

ARBITRATOR JUSTICE MOSENEKE: And by people of course you mean police
20 officers.

MAJOR GENERAL CHARLES JOHNSON: That's correct, detectives.

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ADV PATRICK NGUTSHANA: Before you proceed on that. There's a document in front of you there. What is that document?

MAJOR GENERAL CHARLES JOHNSON: It is a report that I and the team compiled for the purpose of this hearing.

5 **ADV PATRICK NGUTSHANA:** Justice Moseneke, may I introduce this document as LR42?

ARBITRATOR JUSTICE MOSENEKE: Yes, indeed. Does the witness have a copy of it in front of him?

ADV PATRICK NGUTSHANA: He has a copy of it, ja.

10 **ARBITRATOR JUSTICE MOSENEKE:** You have. Thank you General, right.

MAJOR GENERAL CHARLES JOHNSON: So I gave the task team a lifespan until the end of November this year.

ARBITRATOR JUSTICE MOSENEKE: And do all your colleagues have copies?

ADV PATRICK NGUTSHANA: They have copies.

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes, very well. I'm sorry, you go ahead General.

MAJOR GENERAL CHARLES JOHNSON: I say Justice, I gave the task team a life span of until the end of November to complete the investigations.

ARBITRATOR JUSTICE MOSENEKE: November 2017?

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MAJOR GENERAL CHARLES JOHNSON: That is correct Justice. But as time went on, we realised that there is a magnitude of investigation that had to be conducted and there were also challenges that the team experienced. So firstly they would not be able to make the deadline of end of November 2017, and I had to
5 make a decision to increase the numbers of the task team.

ADV PATRICK NGUTSHANA: Yes.

MAJOR GENERAL CHARLES JOHNSON: So I added another three members, investigating officers from my office.

ADV PATRICK NGUTSHANA: And how many deaths were you investigating?

10 **MAJOR GENERAL CHARLES JOHNSON:** Currently the team comprises of eight investigating officers, led by Lieutenant Colonel Ditabo from my office. I just also need to mention that during September 2017 we were approached by the SIU indicating that they are also, they have been mandated to investigate certain aspects of this matter and they would like to work in conjunction with my team,
15 which I then approved. So our investigations currently are being done mostly in parallel and in conjunction with the SIU.

ARBITRATOR JUSTICE MOSENEKE: Who in the SIU approached you General?

MAJOR GENERAL CHARLES JOHNSON: Justice, unfortunately I don't have that information now, but I was approached via an email, so if need be I can get the
20 particulars of the individual, but it was a manager within the SIU.

ARBITRATOR JUSTICE MOSENEKE: Yes. September 2017.

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MAJOR GENERAL CHARLES JOHNSON: That's correct.

ARBITRATOR JUSTICE MOSENEKE: And by email. Very well.

ADV PATRICK NGUTSHANA: Yes, and that is on LR42, the document in front of you, the second paragraph there that is number 2.

5 **MAJOR GENERAL CHARLES JOHNSON:** Where is that sir?

ADV PATRICK NGUTSHANA: The document in front of you.

MAJOR GENERAL CHARLES JOHNSON: Yes sir.

ADV PATRICK NGUTSHANA: On the first page it's recorded there a data chart was received from Gauteng Department of Health with reported 115 deaths. When
10 did you receive this report?

MAJOR GENERAL CHARLES JOHNSON: The team with their engagements with the department received a list and on that list, 115 names of deceased were provided to the team. From that list during our investigations we established that one individual was still alive and we obtained a statement from the family in that
15 regard. Now currently Justice, the team can account for 127 deaths. So we are investigating 127 files currently as the deaths emanated from direct or indirect transfers of patient from Life Esidimeni to NGO's and other health institutions. I would just want to give a breakdown of this 127, if Justice allow me.

ARBITRATOR JUSTICE MOSENEKE: Yes, indeed. Please do.

20 **MAJOR GENERAL CHARLES JOHNSON:** Of the 127, 38 case dockets of inquests are registered in terms of the Inquest Act, and the rest, the 89 are being

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investigated as enquiries by the team. Just to explain Justice why we have that distinction between the investigations, the 38 deceased were admitted or their bodies were admitted at government mortuaries as being unnatural deaths. Now on this 38 bodies, a total of 30 autopsies were conducted. Therefore on eight bodies
5 no autopsies were conducted. We received an indication from a pathologist that on four of the bodies autopsies were not conducted, because that pathologist we will have the name from the team if need be, was of the opinion that an autopsy would not add value to the investigation.

ADV PATRICK NGUTSHANA: Is this the number of 38, out of the number of 38?

10 **MAJOR GENERAL CHARLES JOHNSON:** Ja, that's correct Justice.

ARBITRATOR JUSTICE MOSENEKE: But that would be four of the eight?

MAJOR GENERAL CHARLES JOHNSON: Yes, that's correct. Currently we are of this 38 inquests, we are awaiting four post mortem reports. So we will, if we receive, if and when we receive the reports, the team will have 34 autopsy reports.
15 In the 89 enquiry files, we don't have any autopsy reports, reason being that the deceased were buried as or the families and some of the NGO's obtained death certificates that indicate the cause of death as natural causes and the bodies were buried. Now Justice, the strategy that we are following, is that because of some of the medical reports that we have seen, we have decided that we will regard all
20 these deaths as unnatural causes until we can prove it otherwise. So although we are investigating 89 inquiries, if we obtain evidence or documentary proof that this individuals did not die of natural causes, we will change the files into inquests in

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terms of the Inquest Act and we will approach the Prosecutor, I neglected to indicate that we have a Senior Public Prosecutor, Ms van der Westhuizen, at Pretoria Magistrate Court who is also working with the team. So we will then approach her with the view of whether we should change the enquiries into inquests
5 and whether it would be necessary to do exermations of the bodies in order to establish a cause of death, but that we will only do in conjunction and on the advice of the pathologists. So Justice, what we experience in the team is that our investigation is delayed by the non-cooperation of the Department of Health, the Gauteng Department of Health. We approached the department on various
10 occasions for clinical records and medical records and other documentary evidence that we could use in our investigation, but cooperation was lacking.

ARBITRATOR JUSTICE MOSENEKE: Are you able to place, specify the officers who have not been forthcoming with the information you have been asking for, starting with Dr Lebete. Did he ever come back to you once he had said you must
15 request the information in writing?

MAJOR GENERAL CHARLES JOHNSON: He did not come back to me and I never approached him again, because after we spoke the last time, I just got the indication that there is going to be stumble blocks in this investigation.

ARBITRATOR JUSTICE MOSENEKE: Why did you get that impression?

20 **MAJOR GENERAL CHARLES JOHNSON:** Because initially he was willing to give me and cooperate with us with our requests for the records, without us having to do it in writing to the DG. I got the impression that he had the authority to provide

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me or to provide the team with that information and I was also of the opinion that we are two government departments and why should we beg for information from each other.

ARBITRATOR JUSTICE MOSENEKE: So did you go anywhere beyond Dr
5 Lebete to try and find and procure consent to access the medical records of the deceased in which you have opened only enquiry files?

MAJOR GENERAL CHARLES JOHNSON: We did Justice. We have written proof and we can also get it from our cell phone records, regarding our interaction with the department. Due to the frustration we had with the department, we
10 approached the Senior Public Prosecutor Van der Westhuizen, and a summons in terms of Section 205 of the Criminal Procedure Act was served on the department, specifically on Dr Kenoshi.

ARBITRATOR JUSTICE MOSENEKE: That's in terms of Section 204?

MAJOR GENERAL CHARLES JOHNSON: 205 of the Criminal Procedure Act.

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

MAJOR GENERAL CHARLES JOHNSON: Which determines that we can, the police can if a witness is reluctant to provide evidence, the person can be summoned to go and provide that evidence before a magistrate.

ARBITRATOR JUSTICE MOSENEKE: Yes.

20 **MAJOR GENERAL CHARLES JOHNSON:** So Dr Kenoshi ... [interjects]

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ARBITRATOR JUSTICE MOSENEKE: I'm retired, but I still remember something about that.

MAJOR GENERAL CHARLES JOHNSON: Yes, I know. It's from the olden days Justice.

5 **ARBITRATOR JUSTICE MOSENEKE:** That's a good explanation for everybody in court. Yes, it's as a provision to place somebody under oath and require them to answer questions that may be put to them by the State Prosecutor, where you are obliged in law to answer the questions.

MAJOR GENERAL CHARLES JOHNSON: Or to provide exhibits and ...
10 [interjects]

ARBITRATOR JUSTICE MOSENEKE: And documentation.

MAJOR GENERAL CHARLES JOHNSON: Documentation. So the matter was in court in the Pretoria Magistrate Court three times, and it has now been remanded for a final remand for the department to comply till the 12th of December in the
15 Pretoria Magistrate Court. Now since this matter has been in court, we received some documentation in drips and drags, but we need, now we need to communicate with the department through MNS Attorneys, who is representing the department. So it frustrates our investigation.

ARBITRATOR JUSTICE MOSENEKE: The department referred the police and
20 your investigating unit to their attorneys that you communicate with them through their attorneys. Is that what you're saying?

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MAJOR GENERAL CHARLES JOHNSON: That's what I'm saying Justice.

ARBITRATOR JUSTICE MOSENEKE: And that they would not between two state departments share information or interact with you without introducing private attorneys?

5 **MAJOR GENERAL CHARLES JOHNSON:** That's what I find very strange Justice and therefore we went the court route to obtain the information from the department. We also approached ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Did Dr Kenoshi say why upon receipt of a Section 205 summons, he did not simply tender the information rather than submit
10 to the (inaudible) of Section 205?

MAJOR GENERAL CHARLES JOHNSON: We did not get any explanation in that regard Justice.

ARBITRATOR JUSTICE MOSENEKE: Very well. Okay General.

MAJOR GENERAL CHARLES JOHNSON: We also approached Life Esidimeni,
15 who indicated to us that all the information that we have, was provided to the department and we should request it from them. At a later stage when we due to the department not providing us with the information, we again approached Life Esidimeni and their attorney Rick Martin gave us the indication that we will have to pay for the information. Now ... [interjects]

20 **ARBITRATOR JUSTICE MOSENEKE:** Pay for the copying of the information or pay for the information?

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MAJOR GENERAL CHARLES JOHNSON: Pay for the copying of the information and that would have amounted to between thirty and fifty thousand rand. Now I am not prepared Justice to pay for evidence that we can use the law to get this information from them for free. So I'm not going to pay for that information. So my
5 intention is to give them a time frame to provide us with the information, failing which I will approach the court again to obtain the information from them. We also tried ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Did you, do you remember who you spoke to at Life Esidimeni or who you interacted with or was it only through their attorney,
10 Mr Rick Nelson you said. Did you?

MAJOR GENERAL CHARLES JOHNSON: We have the names ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Mr Rick Martin.

MAJOR GENERAL CHARLES JOHNSON: We have the information of the people which we interacted to, both at Life Esidimeni and at the department. The
15 team leader is here. Maybe I must request him to provide me with that information which I can give to you.

ARBITRATOR JUSTICE MOSENEKE: Yes, I would like you to do so. (inaudible) if it is in writing General and then we can or if it is sms records, then we can have it before us, because there will be witnesses from the department who will be coming
20 after you that is senior officials of the department. So the documentation would help all the parties here. Thank you.

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MAJOR GENERAL CHARLES JOHNSON: I undertake Justice, depending on how long I am going to be sitting here to deal with it, otherwise I will maybe if we have an adjournment, task the Colonel to go to the nearest police station so that we can get that information typed out on the dates that we interacted with the
5 department and Life Esidimeni and who we interacted with and what was the responses.

ARBITRATOR JUSTICE MOSENEKE: That will be helpful, thank you General. You may proceed.

ADV PATRICK NGUTSHANA: I see here you are investigating a recorded,
10 reported 127 deaths. Why is that so?

MAJOR GENERAL CHARLES JOHNSON: It is because we, partly because we don't know, we don't have the hospital records. We don't have the clinical records of the people that was moved from Life Esidimeni and we do not have most of the information and records, clinical records, medical records from the NGO's where the
15 deceased were taken to.

ADV PATRICK NGUTSHANA: Yes.

MAJOR GENERAL CHARLES JOHNSON: Most of these files of the NGO's are with the department.

ADV PATRICK NGUTSHANA: Okay.

MAJOR GENERAL CHARLES JOHNSON: That's our information. We don't
20 have proof that it is with them, but when we approached the NGO's they said the

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files were handed over to the department. So it is critical Justice that we obtain the clinical files and medical files of the deceased from Life Esidimeni, because our information is that many of this patients were in Life Esidimeni for a very long time. Now we want to see and want to know what was the health condition there and
5 when were they admitted at the NGO's and what was then the position of their health there and what medication and treatment did they receive and why when they were in Life Esidimeni they did not die, to be blunt.

ADV PATRICK NGUTSHANA: Yes.

MAJOR GENERAL CHARLES JOHNSON: But now when they went to the
10 NGO's for such a short period they died. So it's critical that we have both that medical history and the clinical records to determine whether there was any negligence or not.

ADV PATRICK NGUTSHANA: Yes. That is on the first page of this document, that is ELAR42, the second last block. It's recorded NGO/health institution.
15 Underneath there's Precious and underneath there there's another block from Anchor House in Cullinan to Precious Angels. So you have approached these institutions or NGO's requesting this information from them, and they informed you that the information ... [interjects]

MAJOR GENERAL CHARLES JOHNSON: Is with the department.

20 **ADV PATRICK NGUTSHANA:** Is with the department, so they don't have anything else.

MAJOR GENERAL CHARLES JOHNSON: They don't have.

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ADV PATRICK NGUTSHANA: Okay.

MAJOR GENERAL CHARLES JOHNSON: What we established also through our investigation Justice, is that the centre in Cullinan transferred patients that were in their care ... [interjects]

5 **ARBITRATOR JUSTICE MOSENEKE:** You mean the Cullinan Rehabilitation Centre?

MAJOR GENERAL CHARLES JOHNSON: That's correct Justice. They transferred patients that were in their care for a long time, out of their institution to Precious Angels to make space for patients from Life Esidimeni. We interviewed
10 and individual from Precious Angels yesterday where we obtained information in this regard, but because of the, that the investigations in my view with respect Justice is still subjudicre, I would request that we or that I do not be asked to divulge the content of statements in any of these investigations.

ARBITRATOR JUSTICE MOSENEKE: Yes. Subject to argument from council
15 yes, you should not divulge any of your interaction with witnesses at this stage and ... [interjects]

ADV PATRICK NGUTSHANA: Outside of ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: You know, there may be argument legally which we will listen to if we have to get there, but for now I think you are entitled not
20 to divulge information.

MAJOR GENERAL CHARLES JOHNSON: Thank you Justice.

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ADV PATRICK NGUTSHANA: Apart from the statements you had obtained from witnesses, are you able to divulge the post mortem reports for our purposes here?

MAJOR GENERAL CHARLES JOHNSON: Yes Justice, I will if you allow me I would go through the 127 names that we have and what is critical, what is
5 outstanding critical in that person's investigation for us to fast track the investigation and maybe name the institution where this deceased was transferred to.

ARBITRATOR JUSTICE MOSENEKE: I think we should go through that exercise Major General. I think it's important. Let's put it on record. So deal with the lists in the way that you think is beneficial to us.

10 **MAJOR GENERAL CHARLES JOHNSON:** Thank you Justice. May I proceed sir?

ADV PATRICK NGUTSHANA: Yes, you can proceed.

MAJOR GENERAL CHARLES JOHNSON: Our first inquest docket was registered at Atteridgeville. The deceased is only known as Meme. We don't have
15 a surname or a other name. This person was at Precious Angels and our crucial documentation is the clinical records that Precious Angels kept and then we would then take the matter to a pathologist for an expert opinion on the cause of death.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MAJOR GENERAL CHARLES JOHNSON: The next one is also registered ...
20 [interjects]

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ARBITRATOR JUSTICE MOSENEKE: Of course in every case we have to assume General that you also need whatever Life Esidimeni might be able to provide. I mean clinical records from them.

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice.

5 **ARBITRATOR JUSTICE MOSENEKE:** Very well.

MAJOR GENERAL CHARLES JOHNSON: I just made in the last column a summary of the critical things.

ARBITRATOR JUSTICE MOSENEKE: Yes.

10 **MAJOR GENERAL CHARLES JOHNSON:** That we need. Not the whole investigation that is still outstanding.

ARBITRATOR JUSTICE MOSENEKE: Fair enough.

MAJOR GENERAL CHARLES JOHNSON: Then our second one is also registered at Atteridgeville police station. The deceased is Magdaline Viljoen. Now this individual was transferred from Cullinan to Precious Angels. We also need
15 clinical records and also an expert opinion. The third one is also registered at Atteridgeville. It's a Christopher Makhoba of Precious Angels. Again we need records from Life Esidimeni and Precious Angels. The fourth one Atteridgeville, Sipiwe Makhunga. Again Precious Angels. Clinical records. Life Esidimeni, Precious Angels and then an expert opinion. The fifth one also Atteridgeville,
20 Paulos Makgane. This individual was at Tshepong. Clinical records and an expert opinion. The sixth matter was registered at Cullinan police station. The deceased

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is Harold Sibusiso Nkosi. The person died at CCRC. We have records, because I just want to indicate at this stage that we received good cooperation from CCRC. The things that they had they provided us with. The information that they had. So in this matter we are in the process of presenting the docket to the pathologist for an expert opinion. The next one is also registered at Cullinan. The deceased is Jan Denicker. Also died at CCRC. We are awaiting a post mortem report. The eighth one is Charity Ratsotso, also at Cullinan. Died at CCRC. We are awaiting a, or we should still obtain a statement from a caregiver at the institution.

ARBITRATOR JUSTICE MOSENEKE: I'm sorry General. Let me interrupt you. I know several of the people attending are using earphones. Has the Zulu interpreter got this, does he have this list before him? We're doing this because it is important for people who are here to know, so I want him to as the General reads out the details I would like him to translate them as accurately. Both interpreters. Afrikaans as well as the Zulu interpreters. If they could be given copies of this please. Thank you, you may proceed.

MAJOR GENERAL CHARLES JOHNSON: Thanks Justice. I might also at this stage indicate that the names of the deceased is what we received and there might be differences in the spelling or the pronunciation or even incorrect name. So I just want the Justice to take note of that.

ARBITRATOR JUSTICE MOSENEKE: Yes, that's why I want them. You know, people are here to hear. Family members and loved ones. That they can go to their council and attorneys and say you know, actually this is a correction needed and so on.

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ADV PATRICK NGUTSHANA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Very well.

MAJOR GENERAL CHARLES JOHNSON: The tenth, the ninth individual deceased was is known as Karen Lucille. Also CCR. The case registered at
5 Cullinan. The docket is going to be presented for an expert opinion on the cause of death. Then we go back to Atteridgeville. Number 10 is Aaron Mkhwanazi. This deceased died at Tshepong. We still need to trace the next of kin to get a statement and then we will be presenting the docket for an expert opinion. The eleventh one is registered at Atteridgeville. Timothy Nxumalo. He died at Ubhle
10 be Nkosi. We also need to trace the next of kin of the deceased. The twelfth one is Atteridgeville. Samson Nhlapo who died at Precious Angels. We need clinical records from Rabafeni and clinical records from Life Esidimeni. At this stage maybe I should also indicate that the volume of patients that Precious Angels received necessitated them to use other facilities to accommodate the patients that they
15 received through the department from Life Esidimeni. So if we talk about the person died at Precious Angels and we need records from Rabafeni, it might be one that was, in actual fact was supposed to be at Precious Angels but was transferred to another. What we also found is that in many instances Precious Angels used private dwellings as institution to accommodate the patients. The next thirteenth
20 deceased is Virginia Macaphela from Anchor House in Cullinan to Precious Angels. We need the clinical records and an expert opinion. Number 14, Atteridgeville. Frans Dekker died at Tshepong. An expert opinion is awaited. Number 15 is Sibusiso Mthombeni. This individual died at Bophelong Suurman. I think it's

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somewhere in Hammanskraal. An expert opinion is awaited. Then we go back to Cullinan. Howard Louw, CCRC and we need to trace the next of kin to obtain a statement. Number 17 is Soma Dlalani. Also died at CCRC. We also need to trace the next of kin and obtain clinical records and an expert opinion. Number 18. Vuyo

5 Aaron Nqondwane. Died at CCRC. Clinical records and an expert opinion. Number 19. Registered at Cullinan. Jacobus Burger. Individual died at CCRC. Clinical records we are awaiting from Mamelodi Hospital and records, also clinical records from Life Esidimeni. Number 20. Reported at Cullinan. Tianne Krause. CCRC. Post mortem report and the records from Life Esidimeni. 21. Cullinan.

10 Siswe Hlatswayo from CCRC to Anchor House. We are awaiting an expert opinion. Number 22. Cullinan. Leonard Breedt. Died at CCRC. We are awaiting a statement of the CEO of CCRC. We also need a statement from the next of kin. Clinical records from Mamelodi, excuse me Justice and clinical records from Life Esidimeni. Atteridgeville, number 23. William Mvulane. Ubuhle be Nkosi. We are

15 awaiting a post mortem report. Number 24 was registered at Pretoria West. Mashiloane Mangana. Died at Precious Angels. Clinical records from Precious Angels, Life Esidimeni and an expert opinion. Number 25. Lucky Maseko. Precious Angels. Clinical records from Precious Angels and Life Esidimeni and an expert opinion. Number 26. Pretoria West. Josiah Daniel Charles. Precious

20 Angels. Clinical records from Precious Angels, Life Esidimeni and an expert opinion. Number 27. Registered at Pretoria West. Terrence Chaba. Died at Precious Angels. Clinical records both from Precious Angels and Life Esidimeni and an expert opinion. We go back to Cullinan. Jaco Stols. Died at CCRC. We

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need an expert opinion on the cause of death. Number 29. Kenneth Soka. Also died at CCRC. We are awaiting an expert opinion. In our view our investigation is completed in this matter.

ARBITRATOR JUSTICE MOSENEKE: Just while you're there General. I take it in
5 each case you have as a bear minimum you have a death certificate.

MAJOR GENERAL CHARLES JOHNSON: We do Justice.

ARBITRATOR JUSTICE MOSENEKE: And therefore proof of death at this stage is irrefutable. I mean these people have passed on.

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice.

10 **ARBITRATOR JUSTICE MOSENEKE:** Yes, with the investigations, very well.

MAJOR GENERAL CHARLES JOHNSON: So what we're doing in those instances Justice where we only have a death certificate, we are investigating through the funeral undertakers through to Home Affairs in an attempt to at least get to the next of kin to start off with our investigation due to the delays, frustration that
15 we have with the department in providing us with information to fast track our investigations.

ARBITRATOR JUSTICE MOSENEKE: And every time you don't mention the need to contact next of kin, may we assume that you have in fact tracked and traced family members who would also confirm independently the death and the
20 burial.

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice.

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ARBITRATOR JUSTICE MOSENEKE: Very well.

MAJOR GENERAL CHARLES JOHNSON: Number 30, and I'm sorry to refer to the deceased as numbers, but it's just for purposes of progress Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes, no that's well understood.

5 **MAJOR GENERAL CHARLES JOHNSON:** Number 30. Krugersdorp. The deceased is known as Sam Sam. Mosego Home. We are awaiting the expert opinion. Number 31, Joburg Central. Moses Mabena. Mosego Home. The investigation is completed. We will be submitting the docket for an expert opinion. Kagiso, number 32. This individual's information that we have is Two Stroke
10 Eleven, which might be a file reference number. Baneng Care Centre. We are awaiting clinical records.

ARBITRATOR JUSTICE MOSENEKE: What would his, his or her death certificate reflect?

MAJOR GENERAL CHARLES JOHNSON: It reflects Two Stroke Eleven. No
15 name Justice. So this one we will prioritise maybe through our forensic services in terms of to establish whether we have something of the individual on record. Once we have determined a name, or what happened is that some of these individuals that were taken to the government mortuaries were taken there without information about names and so on. So I have instructed our victim identification section within
20 the forensic science laboratory to do facial reconstruction and so on, so that we might be then be able to use a DNA analysis so that we then might be, that firstly we have DNA samples available and we have a facial reconstruction of the

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deceased, so that in the event that we trace family members we can then positively identify the deceased. The number 33 at Florida police station. Piet Sekgaolela. Baneng Care Centre. We are awaiting clinical records from Life Esidimeni. Brixton police station. Christiaan Matthys Hartman. Mosego Home. We still need to trace
5 the next of kin and then we are going to take the docket for an expert opinion. Diepkloof ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: And for instance in the case of Christiaan Matthys Hartman, what does statement of next of kin mean? Does it also mean his body is still in the custody of the government mortuary?

10 **MAJOR GENERAL CHARLES JOHNSON:** No. The deceased could have been already buried, but we don't have the information of the next of kin, because what we established is that in the clinical files or the hospital files of Life Esidimeni, the particulars of the next of kin as well as addresses and contact number are there. So if we get that we can approach the next of kin for a statement to fast track our
15 investigations.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MAJOR GENERAL CHARLES JOHNSON: And to determine when last did they visit or see the deceased, what was his medical condition in their opinion and so on. That's the reason why it's important for us to interview the next of kin.

20 **ARBITRATOR JUSTICE MOSENEKE:** Very well.

MAJOR GENERAL CHARLES JOHNSON: The number 36 is at Cullinan. Joseph Gumede. CCRC and we need a statement of a sister at CCRC.

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ARBITRATOR JUSTICE MOSENEKE: You may have jumped item 35, which is Diepkloof.

MAJOR GENERAL CHARLES JOHNSON: Josephine Masuku. Takalani Mosego and we need photo albums from the mortuary and then a statement of a nurse at the institution where he circummed. I'm going to number 37.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MAJOR GENERAL CHARLES JOHNSON: Deborah Phehla. Takalani Mosego. We need an expert opinion and cause of death. Number 38 at Cullinan. Terrence Motshabisi Michael Tiholwe. Shammah House. Statement of the next of kin and clinical records. That concludes the 38 inquest files that we are currently busy with the investigation. The next part is the 89 enquiry files that we are investigating. Remember Justice, this enquiry files is based upon death certificates that we opened the files. Number one is Ntsoelengwe Michel Mokgethi.

ARBITRATOR JUSTICE MOSENEKE: You see, I'm asking you to read this out in the hope also that many people, the people who are here present would hear the names and some would be next of kin and they could walk up to their lawyers and say I'm available to make the statement, but many other people of course we know watch this as it is carried live and this increases the hope that people will come up and help you in your investigations.

MAJOR GENERAL CHARLES JOHNSON: We appreciate that Justice, we will ...
[interjects]

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ARBITRATOR JUSTICE MOSENEKE: I'm afraid we're going to have to show patience and go through this. I think it is an important ... [interjects]

MAJOR GENERAL CHARLES JOHNSON: I will also Justice provide the contact details of the team leader, so if anybody wants to make contact with the
5 investigating team they can do so freely.

ARBITRATOR JUSTICE MOSENEKE: Yes, okay.

MAJOR GENERAL CHARLES JOHNSON: Number one I said is Ntsoelengwe Michael Mokgethi. The person died at Mosego. What we have is that the individual was 59 years of age. We also need clinical records and a statement from the next
10 of kin. Number two. Jonathan Mothapo at Mosego Hospital. A 64 year old. Clinical records from Yusuf Dadoo Hospital in the Westrand.

ARBITRATOR JUSTICE MOSENEKE: And where would you typically pick up the date, the age of the deceased, from the death certificate?

MAJOR GENERAL CHARLES JOHNSON: That's right Justice.

15 **ARBITRATOR JUSTICE MOSENEKE:** Very well. You may continue.

MAJOR GENERAL CHARLES JOHNSON: May I proceed Justice?

ARBITRATOR JUSTICE MOSENEKE: Yes, you may proceed. Thank you General.

MAJOR GENERAL CHARLES JOHNSON: Number three is John Mahloko.
20 Mosego institution. 62 years of age. We need a declaration of death and there are some other investigations that are still outstanding which is not critical. Number four

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is Peter Mvundla. Mosego. 58 years of age. Statement of the next of kin and clinical records from Life Esidimeni. Number five. Rebecca Hlabathi. Also Mosego. 87 years of age. Statement of next of kin. Clinical records from Life Esidimeni and hospital records from Leratong Hospital. You will see Justice that we
5 don't mention a police station where this matters has been registered, because it was not reported at a police station. I have registered that as enquiries at my office, but on our crime administration system. Our crime administration system is the computerised system where we record reported crime. That will be criminal offences, inquests and enquiries for investigation purposes. If I may proceed?

10 **ARBITRATOR JUSTICE MOSENEKE:** And when you convert this into say inquest dockets or other dockets then you would ... [interjects]

MAJOR GENERAL CHARLES JOHNSON: Close off the enquiry.

ARBITRATOR JUSTICE MOSENEKE: You close off the enquiry and it would bear which CR number?

15 **MAJOR GENERAL CHARLES JOHNSON:** It will, the process would be that I would then close the enquiry as file duplicate of inquest CAS number so and so or murder so and so.

ARBITRATOR JUSTICE MOSENEKE: And it can be issued from head office?

MAJOR GENERAL CHARLES JOHNSON: We're doing it from my office.

20 **ARBITRATOR JUSTICE MOSENEKE:** Yes, okay.

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MAJOR GENERAL CHARLES JOHNSON: Because the people, myself and the people working in my office have access to all the, through the system through all the cases that is registered at the 1144 police stations in the country.

ARBITRATOR JUSTICE MOSENEKE: Very good.

5 **MAJOR GENERAL CHARLES JOHNSON:** I was at number five, Rebecca Hlabathi. Mosego. 87. We need Leratong Hospital records and Life Esidimeni clinical records and a statement of the next of kin. Number six. Nicholas Anthony Jannik. Mosego Hospital. 68 years old. Statement of the next of kin. Clinical records from Life Esidimeni and hospital records from Leratong Hospital. Number
10 seven Johannes Sydney Dlongwane. Mosego. 67 years of age. Statement of the next of kin and clinical records from Life Esidimeni. Number eight. Ishamel Makwe. Mosego. This was an 85 year old individual. Clinical records from Life Esidimeni and a statement regarding the declaration of death. This declaration of death statement is just a formality relating to chain statements to deal with how the body
15 was handled from the time of death being certified death until the autopsy was conducted. So it's important for us in progress with our investigations to have that statements.

ARBITRATOR JUSTICE MOSENEKE: Of course General if the NGO's had not hurried to certify these bodies as being arising from natural causes, and they had
20 not hurried to have them buried, we wouldn't be here is it?

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MAJOR GENERAL CHARLES JOHNSON: We would have had these bodies in the government mortuaries Justice. We would have had post mortem reports on the cause of death.

ARBITRATOR JUSTICE MOSENEKE: Because the hurried response in fact has
5 the, is frustrating for police investigation. Isn't it so?

MAJOR GENERAL CHARLES JOHNSON: I agree with you Justice and in my view some of the behaviour might boil down to defeating the ends of justice.

ARBITRATOR JUSTICE MOSENEKE: Yes, because in fact you see, you are a senior police officer. In these proceedings that the deaths were caused unlawfully
10 and at least negligently and therefore should have been properly a subject of an inquest. We are agreed about that. Now we are not able to do that and you as police have the duty to prepare inquest dockets, have the instances you're reading now the challenge of putting together an inquest docket so that the law is unable to take its course. What is your comment about that? Particularly about the conduct
15 of the NGO's in this regard.

MAJOR GENERAL CHARLES JOHNSON: Justice, I agree with you and as I said that depending on where our investigation goes, we should seriously in consultation with the NPA look at the possibility of registering and investigating cases of defeating the ends of justice, but we won't I won't take that decision
20 unilaterally. We will do it in consultation with the NPA based on prima facie evidence.

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ARBITRATOR JUSTICE MOSENEKE: Yes, and there might very well be other offences, since your General, I'm sure the council when they ask questions they will put that to you. I mean thin about legislation on disposal of dead tissue. Isn't it so that the law sets our requirements for procuring for instance a burial order?

5 **MAJOR GENERAL CHARLES JOHNSON:** That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: And it poses an obligation around certification of the cause of death and it may well be that as we investigate, we should find out whether NGO's followed the law in procuring for instance death certificates or burial orders and certification as to causes of death. Something
10 which is quite crucial for the law to determine the cause of death of every single person who dies in our country. Isn't it so?

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice. The Inquest Act is clear on what should be investigated by the police. It states that the South African Police Service must investigate all unnatural deaths. That's murders,
15 culpable homicides, accidents, inquests and also investigate any death where there is a suspicion that the death, the cause of death might be unnatural. Even though we don't have proof at that stage we're obliged to investigate. So the process of investigation entails that a pathologist in the employment of the government must conduct an autopsy on the deceased to determine the cause of death and then on
20 the conclusion of the police investigation, the content of the investigation should be produced to a magistrate who would then in terms of the act decide based on the evidence presented to the magistrate firstly the cause of death and whether the

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cause of death can be attributed to an individual or not and whether that individual can be held criminally liable for the cause of death and that's the process.

ARBITRATOR JUSTICE MOSENEKE: Yes. Very well, please continue, but what is clear is that you would have to expand your investigation in instances where
5 you're not able to get people for instance bodies exhumed. You are not able to determine the cause of death. You will obviously have to consider what other offences might have been committed in order to frustrate the normal course of justice, but I'll leave that to you. I just want to make sure that you are alive to the fact that so many people were buried hurriedly and in circumstances where the law
10 was not complied with.

MAJOR GENERAL CHARLES JOHNSON: It's, Justice it form part of our investigation strategy.

ARBITRATOR JUSTICE MOSENEKE: Yes, very well. You may proceed.

MAJOR GENERAL CHARLES JOHNSON: We are at number nine, number
15 eight.

ARBITRATOR JUSTICE MOSENEKE: You're at number nine I think.

MAJOR GENERAL CHARLES JOHNSON: Number nine. David Mabati. Mosego. 63 years old. We need to trace the next of kin. Number ten. Hermanus Bronkhorst. Mosego. A 56 year old individual. We need to obtain a statement from
20 the nurse who assessed this patient and then we take our investigation further. Number 11. Fanasi Mthlani. Mosego. 47 year old individual. Statement of the nurse who assessed the patient and other investigations. Number 12. Mama

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Mbhele. Hephzibah institution. It's a 73 year old individual. We need a statement there from that institution. We also need to trace the next of kin through our own Criminal Record Centre, that CRC on the report stands for the police Criminal Record Centre and then we need a statement from a Dr Manamela.

5 **ARBITRATOR JUSTICE MOSENEKE:** And have you been able to access Dr Manamela before now in your investigation?

MAJOR GENERAL CHARLES JOHNSON: Not yet, not yet. Number 13. We've approached the institution where doctors are supposed to be registered to obtain details of the Manamela, this Dr Manamela. So we hope that through that
10 professional board we will be able to obtain the details of the doctor and then interview the doctor. Number 13. Margareth Momezulo. Also at Hephzibah. 59 year old. We need a statement from the CEO and clinical records. We also need to interview Dr Manamela. Number 14. Lilly Dimakatso Mogale. Also at the Hephzibah institution. We also need to trace the next of kin, clinical records from
15 Life Esidimeni and statement from Dr Manamela. Many of this death certificates were issued by this doctor. So we need to interview the doctor relating to firstly on what basis did he issue the natural causes death certificates. Did he treat the patients before that death. Were he present at the time of death. Did he view the body after the death and so on. That's the critical information that we need to
20 establish as part of our investigation.

ARBITRATOR JUSTICE MOSENEKE: But do you know General that Dr Manamela was the head of mental health care within the Department of Health of the province of Gauteng?

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MAJOR GENERAL CHARLES JOHNSON: Justice, as I say we don't know who this Dr Manamela is and therefore when this arbitration hearing of yours started, I saw it as a means that we could use from the police's side to access names of individuals who testify before this arbitration tribunal and that would maybe fast track our investigations. I indicated to the evidence leader this morning that the only reason why I did not approach him as yet, is I wanted the process to be finalised and then I would have approached him but now luckily we were summoned and to come and present evidence before you Justice and maybe this will then fast track the proceedings to, for us to obtain information.

10 **ARBITRATOR JUSTICE MOSENEKE:** Sure. If it's the same Dr Manamela it's a high ranking official in the department who assumingly was ordinarily situated at the head office of the province in Johannesburg.

MAJOR GENERAL CHARLES JOHNSON: So then most probably this Dr Manamela at head office did not issue the death certificates. Most probably we don't know, but we will clarify it during our investigations Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes, very well.

MAJOR GENERAL CHARLES JOHNSON: Number 15. Nceku Mavis Twala. Also Hephzibah. 66 year old. It's the same as the other patients that died. The statement of the next of kin, Dr Manamela and CEO of Hephzibah. Number 17. Martha Mothibi. Hephzibah. 71 years old and the outstanding issues is the same that I mentioned before. Number 18. Jubulani Mnisi. Tshepong. 59 year old individual. Clinical records from Life Esidimeni. Statement from Dr Manemela and

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a statement from the CEO of Hephzibah as well as statement from the next of kin. Number 19. William Joseph Golden. Died at Tshepong. 55 year old. The same as the previous one. Number 20. Johannes Ungerer. Tshepong. 65 years old. The same as the previous outstanding. Number 21. Johannes Botha. Tshepong. A 52
5 year old individual and outstanding is the same as the others that I have mentioned previously. Number 22. Jan Snyder. Tshepong. 72 years of age and outstanding is the same. Number 23. Frederick Nelson. Tshepong. 61 years of age and the same outstanding matters as previously mentioned. Number 24 ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Where would Dr Manamela have signed
10 off? On the declaration of death form, where would her signature appear? Where would she have done the certification? We have a number of forms before us. I can't remember what the name of the form is. I'm sure council will put it to you, but her name actually appears on the forms that you have to complete before you issue a death certificate.

15 **MAJOR GENERAL CHARLES JOHNSON:** That's right.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

MAJOR GENERAL CHARLES JOHNSON: Courts write here Justice. So therefore it's critical that in each of these cases Dr Manamela provide us with an explanation in the form of an affidavit statement. May I proceed Justice?

20 **ARBITRATOR JUSTICE MOSENEKE:** Yes, you may thank you.

MAJOR GENERAL CHARLES JOHNSON: Number 24. Jean Banana Rantoetse. Lapeng Home. 72 year old. We need to trace the next of kin. Number

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25. Mahmona Du Bree. Takalani Mosego. 37 years of age. Here we need records from Jabulani Hospital.

ARBITRATOR JUSTICE MOSENEKE: You may proceed General.

MAJOR GENERAL CHARLES JOHNSON: Clinical records from Baragwanath
5 Hospital. Clinical records from Lillian Ngoyi Hospital and clinical records from Bheki Mhlangini Hospital. Number 26. Catherlina Khunjwa. Takalani Mosego. 62 years old. Statement from Takalani Mosego institution. Number 27. Julia Mulaudzi. Takalani. 52 years of age. Statement from Takalani and a statement from the next
10 of kin. Number 28. Masweet Mkoneni. Also Takalni. 46 years of age. Statement of the next of kin and a statement at Takalani Mosego. Number 29. Benika Mokaneng. 57 year old individual at Takalani. Statement of the next of kin and a statement of the CEO at Takalani. Number 30. Victor Chauke. CCRC. Statement from CCRC and a statement of the next of kin. Number 31. Zanele Secima. Takalani. 52 year old individual. Statement at Takalani and a statement of the next
15 of kin. Number 32. Johannes Etesebeth. Died at CCRC. 71 years of age. Statement of CCRC, next of kin and the clinical records at Life Esidimeni. Number 33. Caswell Mosiane. Takalani. 41 years of age. Statement next of kin, clinical records as well as a statement from Takalani. Number 34. Rahab Mangena. Takalani. 57 years of age. Statement of the next of kin. Clinical records from Life
20 Esidimeni and a statement from Takalani. Number 35. Busisiswe Shabalala. CCRC. 52 years of age. We need to trace the whereabouts of the next of kin. Statement from CCRC. Number 36. Bekumuzi Robert Sithole. 61 years of age. Statement at CCRC. Number 37. William Fakude. 66 years of age. CCRC.

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Statement from CCRC. Number 38. Mojafela Sangweni. CCRC. This is a 20 year old individual. Statement from CCRC. Number 39. Nellie Johanna Du Toit. CCRC. 49 years of age. Life Esidimeni records. Statement at CCRC and the next of kin. Number 44. Number 40. It's Christina Lale. 81 years of age. CCRC. We
5 need a statement from a nursing sister Manaka. Statement from a social worker. Statement from CCRC and clinical records from Life Esidimeni. Number 41. Mothofela Leroabe. CCRC. 45 years of age. Clinical records Mamelodi Hospital. Statement at CCRC. Number 42. Refiloe Sefoka. 26 years of age. Social worker statement. Clinical records from Life Esidimeni. Number 43. Benedict Lakwa.
10 CCRC. 41 years of age. Clinical records Life Esidimeni and a statement CCRC. Number 44. Ilse Fredericks. CCRC. 41 years of age. Statement of next of kin. Statement of CCRC and clinical records from Life Esidimeni.

ARBITRATOR JUSTICE MOSENEKE: It may be General, but we get your point, when I look at what's outstanding that you may want to, I would like to have the
15 names of the people on record and I'd like them to be set out loudly. We can see what's outstanding. Perhaps you want to call their names, the institution and the age. That would get us to go a little faster, and yet what's outstanding will become quite clear per us looking at it. So I'd rather you were then stay with those three columns rather than all four.

20 **ADV PATRICK NGUTSHANA:** Justice Moseneke, I'm advised that it's 11h30 now. It's time to adjourn.

ARBITRATOR JUSTICE MOSENEKE: Yes. I think the General too would like to have some tea. He is going to be quite a while in the witness seat. So we're going

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to break now General and I hope they do give you tea and some cake. Then we can start again at twelve o'clock, but thank you for being here. We adjourn till twelve o'clock.

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5 SESSION 2

ARBITRATOR JUSTICE MOSENEKE: Thank you, you may be seated. Major General you are under your previous oath. Shall we, proceed Counsel?

ADV PATRICK NGUTSHANA: Major General you stopped at I think 45.

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice. Okay Number
10 45 is Emily Nthembu and we need a statement of the next of kin as well as a
statement from CCRC. Number 46 Thabo Munyane, clinical records of Life
Esidimeni and statement from CCRC. Number 47 Jabulani Phiapholis Moshlongu,
CCRC. Number 48, Ngotso David Mpofu, CCRC, 21 years of age. Number 49
Francois Johan Badenhorst CCRC 50 years. Number 50 Thomas Ngwenyama
15 Thumelo 47 years. Number 51, Rudolph Delarey Bhota Shama House 62. Number
52, Solly Moshegu Precious Angels 35. Number 53, Christina Herbst Precious
Angels 71, Number 54 Sepati Janet Pilane Precious Angels 73. Number 55 Sina
Mosalo Tshepong Santa 60 years. Number 56 Sarafina Ncobu Precious Angels 76.
Number 57 Tembesila Lillian Dlamini Boglehong in Mamelodi 52 years. Number 58
20 Elizabeth Botha Enko 57. Number 59 Johanna Hlaudi Takalani Moseku 59.
Number 60 Sanet Visser Takalani 46. Number 61, Cindy van Rooyen Takalani 34.
Number 62, Batabeli Manwela Takalani 29. Am I not going too fast Justice?

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ARBITRATOR JUSTICE MOSENEKE: I beg your pardon?

MAJOR GENERAL CHARLES JOHNSON: I'm not going too fast?

ARBITRATOR JUSTICE MOSENEKE: No you are doing well thank you.

MAJOR GENERAL CHARLES JOHNSON: Thank you Justice. Number 63 Aabo
5 Ngwe Tshepong 70. Number 64 Jeremiah Modiso Precious Angels 50. Number 65
John Pieterse Santa Tshepong 77. Number 66 Christopher Koketso Mogwerani
Rebafenyi 56. Number 67 Juliet Tshawe Precious Angels 69. Number 68 Piet
Sello San Michael 53. Number 69 Pieter Conradi Weskoppies 53. Number 70
Rantodi Hendrick Mabwe Bophelong 53. Number 71 Julian Anthony Pietersen
10 Precious Angels 52. Number 72 Siabulela Msimanga Bophelong 33. Number 73
Sipiwe Tabeta Precious Angels 41. Number 74, Happy Makubela Shammah 43.
Number 75 Jakobus van Rensburg Weskoppies 64. Number 76 Isaac Tulwana
Shammah 51. Number 77 Ryan Willem Ubugle Ben Nkosi 63. Number 78 Felicity
Adams Goitsemodimo 47. Number 79 Sana Pietie Takalane Mosego 47. Number
15 80 Frederick Colitz Mosego 61. Number 81 Sipho Molwatse Mosego 62. Number
82 David Senekal Moseg 58. Number 83 Howard Ndlovu [inaudible] 81. Number
84 Gerhardus Mayor Mosego 75. Number 85 Solomon Motswe Mosego 67.
Number 86 [inaudible] Kubule Mosego 61. Number 87 Lucas Motshwaneng
Mosego 69. Number 88 Nomsa Joy Samamanye C. Mamane Mosego 55 and the
20 last one Number 89 Soflai Manyana Molefe Leratong Hospital 24. So Judge up to
thus far, in the inquests and in the enquiry-

ARBITRATOR JUSTICE MOSENEKE: Well I must say before you start the second part, that sad as it was, that was a rollcall of death. We have just read names of people under the care of the Province who died. We had already heard about some of them in the evidence. I just want to make light of the moment. That's why every
5 name was important to be said out. It's a rollcall of death and we may proceed with the rest of your evidence as appears in the Exhibit.

MAJOR GENERAL CHARLES JOHNSON: Judge if I may, I would just say that it is unfortunate that I should be the person that is reading this death rollcall and it's quite disturbing.

10 **ARBITRATOR JUSTICE MOSENEKE**: Of course it just emphasises your obligations General to get to the bottom of this conduct and where it discloses an offence to ensure that that offence is prosecuted, but for the work that you have done, it appears to be that you have your arms around the problem and if these people died because there were offences, clearly the South African Police Service
15 has an obvious obligation to prosecute those who, if they had committed crimes, had something to do with it and I am sure you agree with me about that.

MAJOR GENERAL CHARLES JOHNSON: I do Justice.

ARBITRATOR JUSTICE MOSENEKE: Very well General, shall we proceed?

ADV PATRICK NGUTSHANA: Yes Major General, in the list of enquiries you had
20 referred to, I think there are about 12 or so names of deceased. You had stated that the certification was done by a Mr Manamela.

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MAJOR GENERAL CHARLES JOHNSON: That is so Justice, that's the indication that we got in our investigations. As I said, we still need to verify who, is, this Mr Manamela.

ADV PATRICK NGUTSHANA: I will tell you why I am asking you that question. In
5 the bundle of documents which we have been furnished with, the death certificates were furnished together with notice of death and so on. I want to know where do you generate the documents referred to as, notices of, death, at what stage?

MAJOR GENERAL CHARLES JOHNSON: Maybe Justice I should explain the processes that are normally followed when an individual dies. In the event that an
10 individual dies, a doctor must complete a notification of death, stating the cause of death. Let's for arguments sake, say Justice this individual in this scenario died at an NGO, the personnel of the NGO is obliged to get a doctor to do the death notification which will state the possible cause of death. If the doctor indicates natural causes for whatever reason, the process would then be that a private
15 funeral undertaker is summoned to remove the body to that private undertaker's funeral parlour to be kept there. Arrangements will then be made with the family for the dealing with the registration of the death. Remember the notification is not the death certificate. The death certificate is issued by Home Affairs, so the death must be registered in terms of births, deaths, Registration Act at Home Affairs who will
20 then issue a death certificate. That death certificate will then be used to deal with the burial processes. In the event that a doctor does not issue the notification, the body must be removed to the government mortuary and that removal will be done through the Forensic Laboratory Services of the Department of Health. Previously it

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was within our environment, the police environment, but around about 1998/1999, it was handed over to the Department of Health, so when the body is admitted at a government mortuary, we as the police, must register an inquest into the death. Now at the mortuary Justice, two things might happen. The pathologist in the

5 employment of the Department of Health at that government mortuary may view the body and based on his or her findings, corroborated by means of medical evidence that is usually presented to the pathologist, the pathologist will issue a death notification that it is due to natural causes. There is a specific form of the Department of Health that they complete in that regard. Unfortunately I'm not, now

10 knowing the exact number of the form, but in my time during the times I investigated, it was the BI17 Form, but it has changed now. So a copy of that document will then be filed in our docket and the Commander of the detective service, would then close off that investigation as file natural causes and the police investigation is terminated. The family then gets a document to go and register the

15 death at Home Affairs and remove the body from the government mortuary to a private funeral institution or parlour. The second scenario would be where the doctor or the pathologist at the mortuary would conduct an autopsy and make a finding on the cause of death. The doctor would then provide a notification and that notification would be handed over to the family to make the necessary

20 arrangements to remove the body from the government mortuary and to deal with the funeral arrangements and proceedings. Those are the two scenarios. The police investigation into that matter will continue. That docket we cannot close off without presenting the evidence to a magistrate. The magistrate, based on the

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evidence presented before him or her, will make either two decisions, I am going to deal with the inquest as an informal inquest, meaning that the magistrate will, based on the physical evidence that is contained in statements and in documents, make a finding on the cause of death and whether anybody can be held liable for this individual's death and issue then what we call a J56 in that regard. If the magistrate is of the opinion that it is in the interests of justice, he or she might institute a formal inquest. In short, a formal inquest is where evidence is led by a prosecutor and the family can be represented or the person that has caused the death of the deceased may be represented and there will be verbal evidence given, documentary evidence will be provided and after that, the magistrate will make a finding. That is the processes relating to the inquest.

ARBITRATOR JUSTICE MOSENEKE: Thank you General, Counsel?

ADV PATRICK NGUTSHANA: So this certification by Dr Manamela, where do you find it?

15 **MAJOR GENERAL CHARLES JOHNSON**: It will be contained in the individual's file, or in some instances, we will have obtained it from the NGO's and in some instances, we had to obtain copies of that from the funeral parlours and also these few files that we have been provided and documents that we have been provided with from the Gauteng Department of Health.

20 **ADV PATRICK NGUTSHANA**: Yes and then I see now that from our record, there are about 141 or 142 deaths, but according to your records, you have 127 reported

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deaths. Have you had an opportunity to adjust your numbers that you had received?

MAJOR GENERAL CHARLES JOHNSON: Justice I heard the evidence or I saw over the news that there is now 141 plus deaths. As I said previously that I wanted
5 to wait for the conclusion of this arbitration hearing so that we can get information and compare what we have with what was presented to you Justice, so that we can then open either an enquiry or inquest dockets with regard to the shortfall between my records and what was presented to you. We would then institute investigations. It would also have been helpful if we could have received all the information that we
10 requested from the Department and we would have, by now, could have accounted for all the bodies, but unfortunately that did not materialise.

ARBITRATOR JUSTICE MOSENEKE: Fair enough, we were also told by the Department and it's HOD about the new number, so clearly, there is some work as you say to deal with the shortfall and the lists of the full 141, can be obtained, I'm
15 sure the evidence leader Advocate Ngutshana could make that list available, then it will allow you to make a comparison.

MAJOR GENERAL CHARLES JOHNSON: He already did Justice.

ARBITRATOR JUSTICE MOSENEKE: Oh he has already done so.

MAJOR GENERAL CHARLES JOHNSON: This morning, so we are just going to,
20 at our offices, do a comparison and see which deceased we don't have record of then and we will as I said either open enquiry files or inquests depending on the circumstances.

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ARBITRATOR JUSTICE MOSENEKE: Very well.

ADV PATRICK NGUTSHANA: Thank you Justice, I will leave you to my colleagues.

ARBITRATOR JUSTICE MOSENEKE: Yes I would like the witness to finish the
5 report, the written report Counsel. I think we should give the General an opportunity
to complete the report up to challenges, so that we have a full view of the work the
police have been doing and what are his comments and remarks from Paragraph 5
of the report.

ADV PATRICK NGUTSHANA: Thank you, Major General you have recorded that
10 in your testimony earlier on, that you had challenges specifically from the
Department of Health. You do not understand why you had to request documents
through intermediaries, in this instance, attorneys and so on and were you informed
why now instead of dealing with the officials from the Department, now you have to
go through attorneys?

15 **MAJOR GENERAL CHARLES JOHNSON**: We were not informed Justice, but I
assume and it's my assumption, it is because we have served this subpoena on the
Department to get information, so they obtained the services of a legal
representative and I would think that they then want us to work through the attorney,
which is unfortunate to me.

20 **ADV PATRICK NGUTSHANA**: In Paragraph 5 of Annexure L42, that is the report
you had generated. You recall that there are a total of 447 statements have been
obtained by the team to-date and filed and the inquest document has been

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[inaudible] respectively. The process of obtaining outstanding statements is ongoing.

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice. We must remember that I've got this 8 investigating officers and from time to time, the team is
5 in meetings. We had meetings with the Department. We had meetings with Life Esidimeni and various other role players and the fact that we don't have access to information which delays the process of the investigation, therefore, I decided to extend the lifespan of the investigation task team and after consultation with my Divisional Commissioner, we might if need be, increase the members of the task
10 team, so as to expedite the conclusion of the investigations.

ARBITRATOR JUSTICE MOSENEKE: And what's the new target now? We know it was November 2017?

MAJOR GENERAL CHARLES JOHNSON: We've set a target for the end of the financial year, which would be 31 March.

15 **ADV PATRICK NGUTSHANA:** And this is in anticipation that you would receive cooperation obviously from the Department of Health?

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice.

ADV PATRICK NGUTSHANA: Okay thank you. In Paragraph 6, you record that 9 enquiry files were closed after the task team established that inquest dockets were
20 already registered. When were these dockets registered and by whom?

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MAJOR GENERAL CHARLES JOHNSON: Justice remember that these inquests that I have read out, were registered at various police stations across Gauteng and my office did not know of all these cases, so it was investigated separately by one investigating officer, so much so that I had to request all the provinces to provide
5 me with information of patients and cases that are currently under investigation by police stations within the province so that I can withdraw those dockets from the stations and then get the task team to investigate it in a coordinated way. So some of these inquests, after we have already enquiry files for certain deceased and when we received information from the provinces, we realised that this enquiry, an
10 inquest has already been registered for investigation at a police station, so I closed off the enquiry files. I should also mention that the 3 dockets that were registered by the political parties, we have closed off after it was discussed with the prosecutor, because it relates to the same matters that we are investigating and the prosecutor was of the opinion that they are not going to prosecute at this stage in
15 those matters, because it was murder cases that have been registered and at that stage or even now, we cannot say that murder has been committed so we closed it off, just to relieve the burden for accounting for dockets from the team.

ADV PATRICK NGUTSHANA: So those ones are recorded as what currently, those ones you have closed off?

20 **MAJOR GENERAL CHARLES JOHNSON:** The enquiries?

ADV PATRICK NGUTSHANA: Yes.

MAJOR GENERAL CHARLES JOHNSON: They are part of the 38 inquests.

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ADV PATRICK NGUTSHANA: Thank you. The last bullet point under 6, you make reference to 2 enquiry files were closed there are duplicates of the files already registered. Those would make reference to what you had referred to?

MAJOR GENERAL CHARLES JOHNSON: Justice it is part of the 89 enquiries.

5 **ADV PATRICK NGUTSHANA**: Okay. In Paragraph 7 on the following page, the 13 cases reported by political parties, you dealt with and those are the ones you had closed off. On 8, there is reference to post-mortems, that is the 38 inquest dockets you had already dealt with and a total of 13 autopsies were conducted.

MAJOR GENERAL CHARLES JOHNSON: Yes and we are waiting for 4 post-
10 mortem reports.

ADV PATRICK NGUTSHANA: So currently you have 30 finalised post-mortem reports?

MAJOR GENERAL CHARLES JOHNSON: That's right, so we will, if and when we receive the outstanding 4, we will have 34 post-mortem reports in the 38 inquests.
15 As I said, the other 4, the pathologists were of the opinion that an autopsy would not add value for whatever reason the pathologist decided that I don't know.

ADV PATRICK NGUTSHANA: Have you requested reasons why that is so?

MAJOR GENERAL CHARLES JOHNSON: No, not at this stage, but it will form part of the expert opinions that we would file in the case dockets.

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ADV PATRICK NGUTSHANA: Then on the next bullet point, you refer to the fact that the remaining 4 bodies were buried by families before autopsies were conducted. What is going to happen with this?

5 **MAJOR GENERAL CHARLES JOHNSON:** Justice we are investigating the inquest. As I said, in consultation with the NPA and pathologist, if the need arises for us to conduct exhumations of these bodies, we will do so, but we will be guided mainly by the pathologists and the NPA. The exhumation is a costly and heart breaking process, so we tend not to easily go that way.

10 **ADV PATRICK NGUTSHANA:** Then in the last bullet point under 8, you say on all the enquiry files, no autopsies were conducted as bodies were either being buried by families or NGO's. Evidence has been led here, that there are about 7 bodies which are still lying out there in mortuaries. Are you aware of this fact?

MAJOR GENERAL CHARLES JOHNSON: We are not aware of that Justice, but if the information is provided to us, we will deal with it as a priority.

15 **ADV PATRICK NGUTSHANA:** So since you not aware, those bodies will not form part of [inaudible] in the file thank you. Then under Paragraph 9, we have dealt with the composition of the task team that now you are expected a close off report will be expected somewhere at the end of the financial year, that is in March 2018.

MAJOR GENERAL CHARLES JOHNSON: We hope so Justice.

20 **ARBITRATOR JUSTICE MOSENEKE:** I think you have covered all the issues Counsel thank you. I just wanted to make sure that we don't leave anything behind before we start with the cross-examination.

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ADV PATRICK NGUTSHANA: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Thanks. General you are going to be asked questions by various parties and this will be at least for other counsel and each one will introduce themselves and tell them the capacity in which they are here
5 acting. Counsel?

ADV ADILA HASSIM: Major General my name is Advocate Hassim and I appear together with my colleague Ms Stein and we represent the families of 55 deceased. I would like to begin with questions related to what the testimony you have provided. You say that you asked the Gauteng Department of Health for clinical records and
10 other documents, but that the cooperation was lacking. When did you make that request?

MAJOR GENERAL CHARLES JOHNSON: Justice as I testified, my first interaction with the Department was on the 24th of February 2017, when I met with Mr Labete at the offices of the Gauteng Health Department.

15 **ADV ADILA HASSIM**: At this point in time, is it correct that there were new officials in charge of the Gauteng Department of Health? There was a new MEC, a new HOD for example?

MAJOR GENERAL CHARLES JOHNSON: That I cannot confirm. I hear people have been replaced and so on, but me I can't confirm that as a fact.

20 **ADV ADILA HASSIM**: Other than Dr Labete, did you make the request to anybody else in the Gauteng Department? Did you make the request to the head of department for example?

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MAJOR GENERAL CHARLES JOHNSON: No, I did not Justice, but I can confirm that as I testified, the team, after this and after the establishment of the team, the team did interact with the Department, but not me personally and the team is currently busy to compile the report as requested by Justice relating to when we
5 interacted and with whom. We might not be able to provide all the dates, as most of the interaction was telephonically done, but if need be, we could obtain cell phone records to indicate the dates and times that we interacted with the Department.

ADV ADILA HASSIM: I'm asking you this because you said that you engaged with Dr Kenoshi who is the Head of Department and that he did not cooperate and that a
10 Section 205 summons had to be served upon am I correct?

MAJOR GENERAL CHARLES JOHNSON: I did not personally engage him, the team did engage, the Department and we did not get cooperation. Now in order for us to obtain a 205 subpoena which is not being done lightly because of the implications that it has for the individual or for the parties involved, we had to prove
15 to the prosecutor and to the magistrate that indeed, we did interact and we did request and the cooperation was not forthcoming and therefore, ultimately, the subpoena was issued.

ADV ADILA HASSIM: You see Dr Kenoshi has testified before these proceedings and he says in his testimony, that he had provided all information to the SAPS and
20 that there was nothing outstanding from his side. If your testimony today is correct, then it would mean that Dr Kenoshi was already served with a Section 205 at the time that he appeared here. He made no mention of those proceedings, the subpoena that was served.

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MAJOR GENERAL CHARLES JOHNSON: I saw the testimony of the doctor on television and at that stage, he already appeared in court to provide us with the information and if the doctor or the Department, let me not point out to the doctor, if the Department had provided us even today, with all the information that we need, 5 the case wouldn't have been postponed until the 6th of December as a final postponement for the Department to provide us with the information.

ADV ADILA HASSIM: That's December 2017?

MAJOR GENERAL CHARLES JOHNSON: That's correct.

ADV ADILA HASSIM: That's the next appearance. In other words, Dr Kenoshi 10 was lying. You said you saw his testimony on TV?

MAJOR GENERAL CHARLES JOHNSON: He was not telling the truth.

ADV ADILA HASSIM: He was not telling the truth. You also say that you requested information from the NGO's, clinical records and other documents. Which NGO's did you approach to request information?

15 **MAJOR GENERAL CHARLES JOHNSON**: I am not ofay with all the names of the NGO's but what I can say most of the NGO's did not have the records. The only NGO that we could get documentation and some information from, was CCRC and cooperation from them also. As I said, we only interacted with the CEO of Precious Angels for the whole day, so the indication that we have, is that they also don't have 20 the records. It is in possession of the Department.

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ADV ADILA HASSIM: Did they have the records and then return it to the Department, or did they never have the records in the first place?

MAJOR GENERAL CHARLES JOHNSON: According to them, their own records that they kept and some of the information that they received from the Department
5 together with the patients, were taken back by the Department.

ADV ADILA HASSIM: Major General would you agree that when it comes to investigations related to cause of death, such investigations are inherently urgent?

MAJOR GENERAL CHARLES JOHNSON: I agree to that Justice.

ADV ADILA HASSIM: An obvious reason would be because you need to conduct
10 an examination of the body, an autopsy as soon as possible before advanced decomposition takes place, would you agree?

MAJOR GENERAL CHARLES JOHNSON: I agree with that, that it is imperative that an investigation into the circumstances firstly surrounding the death and the cause of death be determined as soon as possible.

ADV ADILA HASSIM: I would like to refer you to certain parts of the record that's
15 before this Tribunal. The first is, let me just tell the file number, the files are behind you, if someone could assist you, File Number 3 and if you could turn to Page 1111. So that letter that is a letter, as you can see from Section 27, the legal representatives of Ms Christine Nxumalo and it's addressed to Captain Mowanza
20 SAPS Atteridgeville and Warrant Officer Mokari SAPS Atteridgeville 16 September 2016. Have you ever seen this letter before?

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MAJOR GENERAL CHARLES JOHNSON: No Justice.

ADV ADILA HASSIM: This letter follows 2 letters that were written by the client herself requesting an inquest into the death of her sister and into the death of others who died at the same facility as her sister. If you look at Paragraph 6 which is on
5 Page 1112, it states it refers to Ms Nxumalo, that she was informed that the report of the death must be referred to the Department of Social Development or the Department of Health for their investigation and that it would be open to them to refer the matter for criminal investigation if they suspect foul play. Is that correct on your understanding?

10 **MAJOR GENERAL CHARLES JOHNSON:** It's incorrect.

ADV ADILA HASSIM: It would be open to a police officer if there are reasonable grounds to believe that the death might be from an unnatural cause to investigate, would you agree?

MAJOR GENERAL CHARLES JOHNSON: I agree Justice.

15 **ADV ADILA HASSIM:** So in this letter, the position was taken that indeed, that is the case, that a police officer who has reason to believe the person has died from unnatural causes, must investigate or cause to investigate the circumstances of that death, that is in Paragraph 7. Paragraph 8 says Section 4 of the Inquest Act obliges you to furnish a report to the Public Prosecutor following your investigation of the
20 death. Is that your understanding as well?

MAJOR GENERAL CHARLES JOHNSON: That's correct Justice.

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ADV ADILA HASSIM: If you turn over the page to Page 1113, in Paragraph 13, the motivation for why it was believed that these deaths were due to unnatural causes, is provided. In Paragraph 13, it says as these deaths all follow the decision of the Department and that's the Gauteng Department of Health in this case, to discharge
5 users from Life Esidimeni and they have all occurred since the discharge of these users between 1 March 2016 and 30 June 2016, our clients believe that there is a clear connection between these multiple deaths, moreover the high number of deaths that have occurred in recent months, suggests that they were likely due to unnatural causes. Paragraph 14 then says request that you take the measures set
10 out in Section 3 of the Inquest Act in regard to all deaths occurring amongst former residents of Life Esidimeni who were removed from Life Esidimeni as a result of the Department's decision to terminate its contract with the facility. Paragraph 15 makes a further request that the inquest be conducted in terms of Section 6(a) of the Inquest Act which allows for a joint inquest into multiple connected deaths and
15 then in Paragraph 16, it reads this matter is inherently urgent due to the need to conduct post-mortem examinations before the burial or the cremation of the deceased, as well as to ongoing danger to the health and safety of other people who have been removed from Life Esidimeni. This was addressed to the police on 16 September 2016 and yet the inquests have not commenced. I would also like to
20 draw your attention to Page 1117 and I will ask you to respond to these in a moment. That letter dated 20 September 2016 is addressed to the Minister of Police, the Deputy Minister of Police, the National Commissioner of Police, the Gauteng Provincial Commissioner of Police, the Atteridgeville Police Station

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Commander and Captain Muwanza from Atteridgeville Police. In front of you, you will find an Exhibit marked LI44, Justice that has been handed in just for a few moments ago, LI44-

ARBITRATOR JUSTICE MOSENEKE: Of course it is a lot of material. At some
5 point you will have to-

ADV ADILA HASSIM: I am going to put a question to the witness. All of these letters are connected and they all relate to one specific point which is I am dealing with them together. LI44 is dated 16 September 2016 and I won't go through it, it basically is again quite obvious that it's an urgent request for a referral to an inquest
10 and this letter is addressed to the Minister of Justice and Correctional Services. Can you explain why in those circumstances, an inquest, or at least an investigation under Section 3 of the Inquest Act which is a preliminary step, it's where the police officer investigates the cause of death can you explain why that would not have taken place? Why did that not take place? It's been over a year now that those
15 bodies have been interred and there are many post-mortem examinations that have not taken place, at least 100.

MAJOR GENERAL CHARLES JOHNSON: Justice I cannot give an explanation as to why upon receipt of these communique which I didn't know of, the police did not act. The issue on Page 1111 was directed to 2 specific individuals at Atteridgeville,
20 I don't know, I don't know who these individuals are, but I would expect that communication relating to a specific police station should be directed directly to the Station Commander of that police station who then should be accountable to respond to the content of that letter. I don't know the 2 individuals mentioned in the

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letter, but as I say, it should have been in my view, if it was directed to the Station Commander, then we could have held the Station Commander accountable for not responding. Not to say that we cannot hold these 2 individuals accountable because if they received the communication, there was a legal obligation on them to act.

ADV ADILA HASSIM: Major General before you go onto your next response, the reason I referred you to Page 1117, is because a few days following the letter to those 2 officers, a letter was addressed to the Station Commander. There was no response from the Station Commander. In fact, as I pointed out, the letter was sent to everybody it could possibly have been sent to.

MAJOR GENERAL CHARLES JOHNSON: I saw it Justice, but I cannot give a comment as to why the addressees did not respond. It was not addressed to me, so I cannot comment on it. The only time that I became aware of the Section 27 issues, was when I don't know the date, I can provide the date at a later stage, was when I received a file and a request for a meeting from our legal services to discuss the report of Section 27 and then the other time that I became aware-

ARBITRATOR JUSTICE MOSENEKE: Was it this year or last year?

MAJOR GENERAL CHARLES JOHNSON: It was this year.

ARBITRATOR JUSTICE MOSENEKE: Was it the early part of the year?

MAJOR GENERAL CHARLES JOHNSON: I think it was early in the year, the first quarter. It was before I had the meeting with Dr Labete and the Health Ombud's person. So that was the time that I took the initiative to coordinate the investigation

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to establish the team, so that we can address this issue of the deaths in terms of the Inquest Act. So I cannot account for the addressees whether they responded or not, but as soon as the matter came to my attention, I acted.

ADV ADILA HASSIM: Thank you Major General, would it not be imperative then
5 that there is an exhumation of the bodies in order to establish if possible at this stage, the cause of death? You mentioned in your testimony, that that has not taken place yet and that you are waiting for expert opinion.

MAJOR GENERAL CHARLES JOHNSON: No I am not waiting for an expert
10 opinion Justice to do the exhumations. I testified that we will upon conclusion of our investigation, be guided by a pathologist and the NPA regarding the feasibility of exhumation of the bodies in order to determine the cause of death, that was my testimony.

ADV ADILA HASSIM: So I am correct though that there have not been
exhumations?

15 **MAJOR GENERAL CHARLES JOHNSON**: There were no exhumations conducted.

ADV ADILA HASSIM: And you are waiting for the forensic pathologist to advise further, is that correct?

MAJOR GENERAL CHARLES JOHNSON: Justice I would like to repeat what I
20 said. I said that upon conclusion of our investigations, we will consult with a pathologist and in consultation with the NPA a decision will then be taken whether

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exhumations should take place and whether it is feasible to conduct exhumations.

That is what I said.

ADV ADILA HASSIM: My question is if it's not feasible, how do you investigate and how do you determine to the best of your ability, the cause of death if the body has
5 been interred for more than a year and as time passes, the harder it becomes for an exhumation to yield anything useful. What is the feasibility going to be later on if it's not feasible now?

MAJOR GENERAL CHARLES JOHNSON: Justice may I explain the procedure relating to exhumations?

10 **ARBITRATOR JUSTICE MOSENEKE**: Yes.

MAJOR GENERAL CHARLES JOHNSON: An exhumation of a body that has been buried, we cannot do an exhumation of a body that has been cremated obviously, so the exhumation of a body that has been buried, can only be done in the following circumstances and the following processes need to be followed. The
15 investigating officer based on *prima facie* evidence that he or she has or has obtained approach a prosecutor to request that consideration should be given for the exhumation of the body. The prosecutor and the investigating officer or through the investigating officer, will then approach the chief magistrate of the magisterial district in which the body has been buried for permission to exhume the body. If the
20 permission has been granted, the municipality of that magisterial district must be approached. In the bigger cities, it would be the Parks Department because the cemeteries resort under the Parks Department, to provide permission once again

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that the body may be exhumed. From the side of the police, we would then obtain quotations from funeral parlours, say now permission has been granted all along the value chain from funeral parlours to conduct the exhumation and to provide a coffin to rebury the remains, so the police is paying for that services. The process also
5 entails that based on the direction of the magistrate that approved the exhumation that it should either be done before sunrise or just after sunrise or late in the afternoon, so as to prevent people from seeing and that type of thing. A pathologist in the employment of the Department must be present during the exhumation. The body will then be removed to a government mortuary where an autopsy will be
10 conducted. If the body was exhumed the morning, we bury the body in the afternoon. If the body was exhumed in the afternoon, we will bury the body the following day that is the process that is followed with exhumations.

ADV ADILA HASSIM: Thank you Major General, I am not trying to trap you or to hold you personally accountable. We do need to understand and to get to the
15 bottom of this and it may be that there are others within the police who are accountable and so that is why I am directing the question. You are here representing the SAPS. You have provided a very useful explanation of the procedure for exhumations, but that was not my question. My question is rather why were there not exhumations at the time at which it was brought to the attention
20 of the police that something was fishy regarding these deaths that seemed that these deaths were not due to natural causes. It's at that point in time that an approach to the magistrate would be made, am I wrong?

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MAJOR GENERAL CHARLES JOHNSON: Justice I cannot approach a magistrate without substantial evidence that foul play is suspected.

ADV ADILA HASSIM: But how would you have that evidence if you don't investigate and I'm not saying you as Major General, I mean you in the sense of the
5 SAPS?

MAJOR GENERAL CHARLES JOHNSON: So we must investigate and when the team started I indicated to them and that's why I have this urgency of setting deadlines for the team, that we investigate so that if need be, we conduct exhumations as soon as possible if approval is granted. The approval for an
10 exhumation does not lie with the police, it does not lie with us, we can only request and provide evidence for the reasons for the exhumation.

ARBITRATOR JUSTICE MOSENEKE: Ja I understand that, but the cutting end of the question is why didn't the police after your concession that this is an urgent matter, act urgently to procure exhumation orders? Alternatively, why didn't they
15 act urgently to investigate in the face of clear requests which were put to you in writing, pointing to the urgency and asking the police to investigate because evidence might disappear That's the cutting end of the question. Do you know why your colleagues did not act promptly from Minister, right through to Station Commander?

MAJOR GENERAL CHARLES JOHNSON: I do not know Justice. The only reason
20 why since I'm involved, we did not conduct exhumations as yet or request for exhumations, is that as I testified, we are guided by a prosecutor, with whom we

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regularly meet relating to the status of the investigations. So at this stage, we did not get an indication that the prosecuting authority is prepared to request for exhumations. We as the police also did not request at this stage.

ARBITRATOR JUSTICE MOSENEKE: Of course, every day that goes, we know, I certainly do, I did medical jurisprudence in my LLB and many, many years of practising as an advocate and as a Judge, every additional day, renders post-mortem examinations inconclusive, is it not so?

MAJOR GENERAL CHARLES JOHNSON: That's correct Justice.

ARBITRATOR JUSTICE MOSENEKE: And indeed, we know that within the first 6 months in summer and maybe 9 months in winter, decomposition is almost complete.

MAJOR GENERAL CHARLES JOHNSON: That's correct Justice.

ARBITRATOR JUSTICE MOSENEKE: And anything beyond a year, you are probably going to- this is well established knowledge, forensic knowledge, over a year, you were going to be confronted with the skeletal framework of the body.

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: So in effect, what Counsel is saying, is that on account of inaction on the part of the police from September 16 last year being asked to investigate, your colleagues have not done so and the result now is that the examination of the buried bodies might very well prove ineffectual.

MAJOR GENERAL CHARLES JOHNSON: I agree.

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ARBITRATOR JUSTICE MOSENEKE: And un-useful.

MAJOR GENERAL CHARLES JOHNSON: I agree.

ARBITRATOR JUSTICE MOSENEKE: Yes Counsel?

ADV ADILA HASSIM: Thank you. Would you agree that there should be an
5 investigation into the failure of your colleagues to act sooner?

MAJOR GENERAL CHARLES JOHNSON: I agree.

ADV ADILA HASSIM: Are you aware of whether there is such an investigation
underway against those who have been addressed in these letters and who haven't
acted, are you aware of any investigation against them?

10 **MAJOR GENERAL CHARLES JOHNSON**: I am not aware Justice.

ADV ADILA HASSIM: Major General, please could you turn to Page 1171 it's in
the same file that you have in front of you, File 3. This is not in relation to inquests
anymore it's in relation to other criminal charges. It's dated 28 March 2017 and it's
a letter from Section 27 to Lieutenant General de Lange, do you see it?

15 **MAJOR GENERAL CHARLES JOHNSON**: I see it Justice.

ADV ADILA HASSIM: I am not going to go through everything in the letter, it's a 24
page letter, but just to assist you, I will take you to the relevant paragraphs, just so
that you get a sense of what the letter is about. In Paragraph 5, it's basically a sort
of summary, it says- well let me start before that, the first paragraph says we write
20 in an effort to assist the SAPS in its investigation of offences arising from this
Marathon Project. In Paragraph 4, it says we seek to assist the SAPS in its duties

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by drawing attention to a selection of offences arising from the report. The report here is a reference to the report of the Health Ombud and to furnish the SAPS with related evidence or potential sources of evidence in our possession or of which we are aware. We do so in an effort to assist the SAPS in investigating these matters

5 further with a view to laying criminal charges against the relevant individuals. The rest of the letter then goes on to set out the possible criminal charges and in Paragraph 5, those offences are listed and they are the following 1- murder, or culpable homicide. 2 – Neglect, abuse, or, degrading treatment, of, a mental health care user. 3 - Assault and an assault in an attempt to do grievous bodily harm. 4 –

10 Violations of the Health Professions Act 56 of 1974. 5 - Failure to create and/or properly maintain a medical record. 6 - Abuse of older persons. 7 - Violations of the powers, privileges and immunities of Parliament and Provincial and Legislatures Act 4 of 2004. 8 - Interfering, hindering or obstructing the Health Ombud. 9 - Perjury. 10 - Forgery and uttering. 11 – Unlawful burials. 12 - Corruption. The letter then

15 unpacks the evidence that is in the possession of Section 27 in relation to each of those potential charges and their view of the relevant law that applies. Are you aware of any of these charges have been investigated in relation to the Life Esidimeni tragedy?

ARBITRATOR JUSTICE MOSENEKE: Shall we first ask the witness whether he

20 has seen the letter before?

ADV ADILA HASSIM: Have you seen the letter before Major General?

MAJOR GENERAL CHARLES JOHNSON: I did not Justice.

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ADV ADILA HASSIM: It's dated 28 March 2017, so it's after the report of the Health Ombud and it's also after the meeting you say took place, when it first came to your knowledge that Section 27 had certain concerns, as I recall you said February 2017.

5 **MAJOR GENERAL CHARLES JOHNSON:** No I said Justice that I cannot remember when the Section 27 issue or matter was discussed between me and our legal services.

ADV ADILA HASSIM: I'm sorry you just said it was the first quarter you didn't give a specific month that's right?

10 **MAJOR GENERAL CHARLES JOHNSON:** Ja.

ADV ADILA HASSIM: Yes, but this letter is dated 28 March. I just want to establish that it was not brought to your attention in that meeting?

MAJOR GENERAL CHARLES JOHNSON: At the meeting with legal services?

ADV ADILA HASSIM: Correct.

15 **MAJOR GENERAL CHARLES JOHNSON:** As I say, it's the first time I see this letter.

ARBITRATOR JUSTICE MOSENEKE: So this would mean that even the Acting National Commissioner of Police Lieutenant General Pahlani did not draw your attention to this letter when you centralised and properly saw it correctly so, the
20 investigation of these deaths?

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MAJOR GENERAL CHARLES JOHNSON: That's correct, as I said Justice, with my interaction with our legal services, I saw letters or a letter that is marked like this Section 27, I can't remember the content of the letter, so as I say, now that I read and the Counsel is reading, to me, this is the first time that I see this specific
5 content, but this content was not part of our discussion with legal services.

ADV ADILA HASSIM: Why would that be? I am very encouraged to hear that there has been a greater allocation of resources to the investigation as you have already testified, more investigating officers have been included in the task team and it is under your control and that there is greater oversight over this investigation. In
10 those circumstances, how could it be that these letters were not brought to your attention?

MAJOR GENERAL CHARLES JOHNSON: That I cannot explain. The only thing that I can think of, is that the Acting National Commissioner, because letters were directed to his office, instructed our legal services to deal with this matter and legal
15 services because it's the investigation of crime or death, that then set up a meeting between us to discuss the letter that the Acting National Commissioner directed to them. I am not sure it followed that procedure, but that would normally be the procedure, or the Acting National Commissioner would have directed or instructed my Divisional Commissioner to deal with the matter directly and to report to him.
20 The only thing I can think how legal services got involved is because the Acting National Commissioner directed them to deal with the matter.

ARBITRATOR JUSTICE MOSENEKE: But again the essence of the question, is that wasn't it the obvious thing to do, General Johnson you are now going to be in

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charge, you are going to put all this together, help us with this, but look at this 24 page letter that sets out the view of the families. Remember that Section 27 was acting for the families of the deceased these are the crimes that have been committed. Wouldn't it have been near natural that your, Commander or like you
5 state Acting National Commissioner would say your starting point is this letter. That's what Counsel is asking. How is, it that it was never brought to your attention?

MAJOR GENERAL CHARLES JOHNSON: That should have been Justice, but we should also remember my investigating team started during May 2017. I see that
10 this letter is March. We reported to the Acting National Commissioner that indeed, there is now a team. I reported to the Provincial Commissioner General de Lange through the Deputy Provincial Commissioner for Crime Detection General Motsepe that we have now this team. Remember we've got people from Gauteng, 3 investigators from Gauteng, so I must report to her that I'm using your personnel in
15 a task team that is being coordinated from head office.

ARBITRATOR JUSTICE MOSENEKE: But who would tell us about the lapse, the omissions between June 2015 when people were dying in large numbers and May 2017 when you put together this concerted effort to investigate these deaths? On whose shoulder does this rest? Who should be telling us why there was no
20 coordinated investigation that you are now doing from June for instance when people started dying, when political parties were going to police stations to make charges, when the Provincial Legislature was talking about these deaths, who can tell us about that period and why nothing was done?

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MAJOR GENERAL CHARLES JOHNSON: Justice my only response can be the officers and the individuals to whom these letters were directed, should explain to you.

ADV ADILA HASSIM: The letters as I have pointed out have been addressed to every possible responsible official. Are we to call all of them?

MAJOR GENERAL CHARLES JOHNSON: That decision lies with the Tribunal, I cannot comment on that. If need be and if positive and detailed responses cannot be given by one individual, then the other individual must come and explain to the Tribunal.

ADV ADILA HASSIM: Is it normal practice for letters of this nature to go unanswered?

MAJOR GENERAL CHARLES JOHNSON: No it's not.

ADV ADILA HASSIM: There hasn't been a response to this letter since 28 March 2017, just so that you know, I think it would be something, seeing as you are now coordinating this effort, that it should be something that you investigate, wouldn't you agree?

MAJOR GENERAL CHARLES JOHNSON: No Justice, what I will do, is I will request copies of all these letters and discuss with my superior, the Divisional Commissioner and if need be, discuss with the Acting National Commissioner to get guidance and direction as to what are we going to do about the investigation of the neglect or failure to respond to these letters. My sole purpose now is to coordinate and manage the investigation of the deaths of the people that were removed from

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Life Esidimeni and the Acting National Commissioner must decide who will investigate the failure to respond to these letters, not me.

ADV ADILA HASSIM: That's fine, I don't want to make an issue about the failure- it's not so much about the procedural- it's not about the delay in responding to a
5 letter. The concern is a greater one. The letter is not simply a letter from the families alleging criminal offences, its providing information to assist your investigation. I read out certain paragraphs, the author is at pains to state that this is an effort to assist the SAPS in its investigation with information that they have in their possession and so on, so that is the concern, is that for your investigation to be
10 effective, you need to work with all parties and get necessary information, wouldn't you agree?

MAJOR GENERAL CHARLES JOHNSON: I agree with that, that's why I say I will be requesting copies of specifically this letter that deals with 1172 or 1171, so that I can read through it and see what is the content and what value that can add to the
15 investigation.

ADV ADILA HASSIM: Thank you Major General. You said that there were charges that were brought by political parties, but you said those files were closed off. What do you mean by that? Does it mean that you are no longer investigating those charges, or that it's on hold, can you explain?

MAJOR GENERAL CHARLES JOHNSON: Justice, what I explained, is that we
20 discussed those 3 cases with Mr van der Westhuizen, the prosecutor. She made the decision and all of us that are working within the judicial environment and in

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courts and so on, know that the prerogative to institute prosecution lies with the prosecution authority, so she made a decision not to prosecute. Whether it's premature or not-

ADV ADILA HASSIM: Was there an investigation that took place beforehand that
5 led her to make that decision?

MAJOR GENERAL CHARLES JOHNSON: No the investigation in those cases has not been completed.

ADV ADILA HASSIM: So there were no complete investigations, but the decision was not to prosecute?

10 **MAJOR GENERAL CHARLES JOHNSON**: That is correct Justice, based on the fact that the team is investigating these deaths already.

ADV ADILA HASSIM: But are you investigating these deaths for the purposes of the charges that were brought by those political parties? Are they related, or for that matter, the number of allegations of criminal charges that are outlined in the
15 letter dated 28 March 2017, so it's more than just the deaths, it's about the conduct of the officials that led to the deaths, which involves a different type of investigation. Perjury for example involves a different type of investigation. Are you investigating those charges?

MAJOR GENERAL CHARLES JOHNSON: Justice there are no dockets that I
20 know of that is open with regard to these offences as contained on Page 1172 of this document currently being investigated as far as I know. But what we must remember, as I said, the decision to prefer charges, any charges against any

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individual, lies with the NPA, that's the first issue. The second issue is based on what comes out of our current investigations, which will upon conclusion of our investigations, be presented to the NPA and it is the decision of and the prerogative of the NPA to prefer whatever charges against whomever based on the content of the dockets that we are currently investigating, but for now, we are not investigating any registered case reflecting these charges.

ARBITRATOR JUSTICE MOSENEKE: Fair enough, if the facts disclose 10 offences, then the person might be charged for 10 offences, even if the original investigation was only for murder.

10 **MAJOR GENERAL CHARLES JOHNSON**: That's correct Justice.

ARBITRATOR JUSTICE MOSENEKE: That's the point you're making.

ADV ADILA HASSIM: Are you conducting an investigation for murder?

MAJOR GENERAL CHARLES JOHNSON: We are not at this stage, but we are not saying that murder has not been committed. So we are conducting Justice, an open investigation, guided by a senior public prosecutor and based on what evidence we collect, our investigation will be directed in different directions.

ARBITRATOR JUSTICE MOSENEKE: Yes but of course the letter is valuable General and you are right to ask for copies, because somebody legally trained clearly, working with the families, has applied his or her mind to the possible offences that might be revealed by the facts known by Section 27 and that should be a valuable document for somebody like you to look at and see that the evidence

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may divulge more offences than the only offence you might be focused on at the beginning.

MAJOR GENERAL CHARLES JOHNSON: I agree Justice.

ADV ADILA HASSIM: Thank you Major General, just before we leave the letter,
5 the reference to Dr Manamela as somebody who signed or certified the deaths of
some of the deceased, had you heard the name, had you heard that name before
Dr Manamela?

MAJOR GENERAL CHARLES JOHNSON: The only time that I heard about Dr
Manamela is, remember the team, I am not investigating, the team is briefing me
10 every week on progress with the investigations and what challenges they
experience and then I provide assistance and guidance as far as I can, so in one or
more of the weekly briefings and weekly reports that I received from the team, the
name Dr Manamela came up.

ADV ADILA HASSIM: In connection with the signing of the certificates?

15 **MAJOR GENERAL CHARLES JOHNSON**: That's correct.

ADV ADILA HASSIM: You will be provided with copies of this letter, I would just
like to draw your attention just for purposes of an example, Page 1174, in
Paragraph 10, which relates to negligence, reckless decisions or actions of Ms
Mahlangu, Dr Selebano and Dr Manamela. Dr Manamela's name re-appears
20 throughout this letter in many, many paragraphs and I want to know whether in your
investigations, you will be investigating the conduct action or inactions of these
individuals, Dr Manamela, Dr Selebano and the former MEC Mahlangu?

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MAJOR GENERAL CHARLES JOHNSON: When I receive this report, I will go through it, I will read through it and see what we can use. Remember I will only be investigating criminal conduct with either negligence or intention whatever form of intent it can be. I am not going to investigate the administrative conduct or
5 negligence or neglect. That wouldn't my field to investigate. My investigation will focus on whether the conduct, of these individuals are criminal of nature.

ADV ADILA HASSIM: But that is what I mean by conduct, I am referring to conduct, actions or inactions that led to the death of the families.

MAJOR GENERAL CHARLES JOHNSON: We will investigate.

10 **ADV ADILA HASSIM**: You will be investigating?

MAJOR GENERAL CHARLES JOHNSON: We will be investigating Justice.

ADV ADILA HASSIM: Thank you. If I may then just have reference to your report L142 and I noticed in the report, that in respect of many of the deceased, you say statement of next of kin is required. We represent a number of the deceased that
15 are reflected on this table. In respect of all the families that we represent and that's about 55 families as I said, we have provided affidavits from the family members, providing information in relation to the deceased and the circumstances of their death. Have you received those affidavits? It would seem you haven't because you say you are still waiting for a statement of the next of kin. Can you explain why you
20 are still waiting when we have provided the affidavits?

ARBITRATOR JUSTICE MOSENEKE: Provided to the police Counsel?

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ADV ADILA HASSIM: Provided to Lieutenant Ditabo and if you turn to Page 1195 of the same file that is in front of you, 17 August 2017, a letter addressed to Lieutenant Colonel Ditabo in which it confirms that all the affidavits, it says affidavits from all our clients have been provided.

5 **ARBITRATOR JUSTICE MOSENEKE**: You are referring to LI43?

ADV ADILA HASSIM: It is also LI43. Justice when we handed this up, we didn't realise it was already in the record.

ARBITRATOR JUSTICE MOSENEKE: I see and in the record, what is it in the record?

10 **ADV ADILA HASSIM**: 1195.

ARBITRATOR JUSTICE MOSENEKE: 1195 thank you. Can you see that General? It is this document with Section 27 in colour, it is marked ELAH43 and you can also find it in the bound volume which Counsel says is on Page 1195 of File 3. You already have the volume in front of you, so it is 1195 and the question is
15 Lieutenant Colonel Ditabo, he has been sent these affidavits at least of those represented by Section 27 and therefore, the report ought to reflect that next of kin information has already been supplied or is available.

MAJOR GENERAL CHARLES JOHNSON: Justice that might be so and I was briefed by the team that there is regular interaction with Section 27 during our
20 weekly briefings and that information is being shared, so it might well be so that we received statements from Section 27 which I cannot confirm because it was a long

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time since I read the dockets. It might be that the team needs other statements from other individuals within the family I don't know.

ADV ADILA HASSIM: When did you prepare this report LI42?

MAJOR GENERAL CHARLES JOHNSON: I was informed on Monday that-

5 **ADV ADILA HASSIM**: Monday 23rd October?

MAJOR GENERAL CHARLES JOHNSON: That's correct, that we are supposed to or Ditabo is supposed to be presenting himself to the Tribunal today to testify. Wednesday I briefed him that he should compile me a report and that I would prefer that I rather come to testify as the coordinator of the investigation.

10 **ADV ADILA HASSIM**: Major General, these affidavits were provided in August 2017, so it was before the report was compiled. There are, if you would like me to recite the names I can, but there are 37 names that are listed in this table, names of 37 deceased whose families we represent in which we have provided affidavits and in relation to each of them, it says outstanding investigation is statement of next of
15 kin. Will you be investigating whether all the information that has been handed to the task team, is actually being properly read and assessed?

MAJOR GENERAL CHARLES JOHNSON: Justice I will do that, I will consult with the team during our weekly consultation which is tomorrow, every Friday, relating to the statements that Section 27 provided. As I said, I don't know what statement
20 Colonel Ditabo still wants from a next of kin. There might be other things that he wants to be explained, or he wants maybe to have a statement from another person

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within the family I don't know. I am presenting my evidence based on a report that was compiled by the investigation team.

ADV ADILA HASSIM: My proposition to you Major General is that your investigation team is less than thorough in their investigations if they don't have this
5 information at hand and if it's not reflected in the report.

MAJOR GENERAL CHARLES JOHNSON: I never said they did not have the statements Justice.

ADV ADILA HASSIM: But according to your report, it says outstanding investigations, statement of next of kin in relation to 37 of our clients.

10 **ARBITRATOR JUSTICE MOSENEKE:** Ja but in all fairness, the General has qualified that. He says yes you may be right, it may be that Colonel Ditabo wants more from next of kin, more than just the identify or may find it necessary to take more statements, but he doesn't know as of fact. In other words, the fact that they are still here, may have a reasonable explanation that is his answer, i.e. he wants
15 more from the families.

ADV ADILA HASSIM: What I can say is that full affidavits were provided with full details, it wasn't just sort of identity of the deceased. I will leave it there. It appears to us that it isn't. You disagree, but I am putting the proposition to you that the investigation seems less than thorough. Finally, I would like to point out-

20 **ARBITRATOR JUSTICE MOSENEKE:** Sorry what was the response of the witness? Do you want to respond to that General?

MAJOR GENERAL CHARLES JOHNSON: I would love to.

ARBITRATOR JUSTICE MOSENEKE: The investigation is less than thorough?

MAJOR GENERAL CHARLES JOHNSON: I would love to respond in the following manner and without challenging or offending the Counsel. I would love to know
5 based on what is this assumption made that the investigation is less than thorough. I tried to provide an explanation as to why. I am not saying it's a fact. I tried to provide an explanation as to why next of kin statement is reflected in this report, so I find it very offensive that based on what is this team of mine, the investigation team of the police, not my team, less than thorough, on what facts Justice?

10 **ADV ADILA HASSIM**: Major General would you agree that you have not seen- you are here representing the SAPS, you are here answering these questions on behalf of your team. Would you agree that there are letters that date back to 2016 from Section 27 that you are not aware of, that you haven't seen?

MAJOR GENERAL CHARLES JOHNSON: But Justice does that then have an
15 inference on the thoroughness of the team? The team cannot be blamed for something that they never saw and I cannot be blamed for documentation that I never saw. So I really don't understand the line of questioning and the line of remarks.

ADV ADILA HASSIM: Let me take you to the line of questioning. Just would you
20 answer the question? Would you agree that you did not see those letters, yes or no?

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MAJOR GENERAL CHARLES JOHNSON: I said it numerous times that I did not see the letters.

ADV ADILA HASSIM: And would you agree that this report that you have provided to us today, say that in respect of a number of deceased, you are awaiting
5 statements of next of kin, but statements have been provided to you. You are saying that there are other statements possibly required from the next of kin. That is what I understood. Have you asked the next of kin for further information other than that which they have provided? Has that information been requested?

MAJOR GENERAL CHARLES JOHNSON: Justice I don't know how I should
10 respond to the constant question about statements of next of kin.

ARBITRATOR JUSTICE MOSENEKE: You all know what I'm going to say now right. The witness must be given proper opportunity to answer questions and no heckling at witnesses please. We are here trying to get to the truth and we can't do it with shouting and heckling. Counsel?

ADV ADILA HASSIM: So the question is Justice Moseneke as I understand where
15 we got to on this issue of statement of next of kin, is that it may be that affidavits were received but there were follow-up statements that were required from next of kin. My question is whether the next of kind, whether those follow-up requests have been asked of the next of kin?

ARBITRATOR JUSTICE MOSENEKE: The question is whether you know whether
20 in fact your team followed up and asked for those additional statements?

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MAJOR GENERAL CHARLES JOHNSON: That I don't know Justice. I gave an indication that I will clarify it at our briefing session tomorrow.

ARBITRATOR JUSTICE MOSENEKE: You will follow up and find out from the briefing session. I suppose Counsel, the difference was really whether you were
5 entitled to say the team was ineffective and of course you can put a proposition to demonstrate that that will help. You are entitled to make the conclusion, but the witness says show me the evidence.

ADV ADILA HASSIM: So again Major General it's not a personal attack. Whatever the reasons that may be that all of this information is not before the team, I don't
10 know, but as an objective fact, there has to be certain information before the team in order for it to conduct a thorough investigation. Finally, a further reason I am saying this, is that there are 10 clients whom we represent who are not on the list in the table that you have provided in LI42.

ARBITRATOR JUSTICE MOSENEKE: In other words, 10 deceased, people?

ADV ADILA HASSIM: Ja they are not part of the investigations that are contained
15 in the table that you have provided to us in LI42. Those are the reasons why I am saying it's not thorough. I am not saying that there is somebody who is intentionally undermining the process.

ARBITRATOR JUSTICE MOSENEKE: Let's top there and give the witness an
20 opportunity. One, you don't have documents that you should have. Two, your report does not cover all deaths which are relevant and Counsel says that points to less than thoroughness. What is your response General?

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MAJOR GENERAL CHARLES JOHNSON: Justice, firstly and I want also not to offend Counsel, firstly, in order for one to make or come to the conclusion that something is not being done thoroughly, you have to be privé with the content of that thing. In this case, it is totally in my view, unfair to say the investigation is not
5 thorough because we talk about next of kin statements. The question arises did Counsel see the content of the docket to come to a conclusion that the investigation was not done thoroughly. Secondly, I accept and I testified that we can account 127 deceased and the only reason why we can only account for them, is because of the delays and the challenges that we experienced with the Department of Health to
10 obtain information, so now it's totally unfair to blame me and my team for 10 individuals deceased who are not reflected on that.

ADV ADILA HASSIM: Except that this information was provided to you by the legal representatives of the families. It wasn't something that you needed to get from the Department of Health. When I say you, again I am referring to the team. Would
15 you agree that an investigation that omits a certain number of deceased is not complete, it's not thorough? Where those names have been provided to you, I fully appreciate that there is information that the Gauteng Department has not provided and you are continuing your investigations. I am taking it at this time what we have been able to show on the record of information that has been provided to the police,
20 but that is not reflected in the report, that's the information I am referring to, would you agree that if the names of 10 deceased are not included in the table where they have been provided to you, that that is not a thorough table?

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MAJOR GENERAL CHARLES JOHNSON: Justice I would not agree that it's not a thorough table, it might be an incomplete table, I don't know. So I really Justice and without pursuing and hammering on something, the matter of not being-

ARBITRATION: So you are saying there might be a reasonable explanation for
5 incomplete lists?

MAJOR GENERAL CHARLES JOHNSON: There might be.

ARBITRATOR JUSTICE MOSENEKE: Counsel on the other hand says well, there shouldn't be an explanation because we gave you the names you should have them on the list. I understand the stand-off, I don't think we are going to- and she puts to
10 you that in her view, it is not thorough and clearly, in your view, it is thorough. You have done whatever you can do. I don't propose to proceed now because it's that time General when we have to go and eat. So we are going to adjourn now. Its 1:45 and and we are going to resume at 2:45 and General you are excused for Lunch until we resume at 2:45 to continue.

15

SESSION 3

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: General, you are under your previous oath before the adjournment. Advocate Hassim?

5 **ADV ADILA HASSIM:** Thank you, Justice Moseneke. Major General, would you agree, I'm sure that you would agree that the primary function of the SAPS is to fight crime?

GENERAL CHARLES JOHNSON: That is correct Justice.

ADV ADILA HASSIM: And would you agree that the SAPS would similarly fight any
10 evidence with crime within the SAPS itself?

GENERAL CHARLES JOHNSON: It is correct Justice.

ADV ADILA HASSIM: I would imagine that you'll probably even take a firmer hand against SAPS officials because of the special role that SAPS officers play in our democracy.

15 **GENERAL CHARLES JOHNSON:** That is correct Justice.

ADV ADILA HASSIM: Please can I ask you to have a regard to an exhibit that is before you that is numbered LA45. It's a print out of a news article and the headline of the article is house of cards " SAPS major general a businesswoman implicated in life a Esidimeni tragedy", have you seen this news report before?

20 **GENERAL CHARLES JOHNSON:** No, Justice.

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ADV ADILA HASSIM: Just to draw your attention to the date it is, the report was first published on 16th February 2017. The reason that I refer to this in the first instance, is that in the letter that we had in regard to earlier on today at page 1171 of the bundle, the letter of 28th March 2017 a 24-page letter. If you still have that
5 letter in front of you and you turn to page 1192 are you there?

GENERAL CHARLES JOHNSON : Yes.

ADV ADILA HASSIM: 1192 paragraph 58, it says "We are of the view that there's the substantial likelihood that corruptive activities took place in the course of the project. The irregularities in the process created [inaudible] opportunity for corrupt
10 activities and there has mover over to an extends reference to likely corrupt activities in the media." And then there is a footnote 7 and in the footnote 7, do you see it? It references an article, councilor and police general implicated in unlicensed premises. Do you see that?

GENERAL CHARLES JOHNSON : I see that.

15 **ADV ADILA HASSIM:** So that is the reason why I'm asking you about this issue and whether you have seen this article before. The article refers to a Major General Malebe Thema, do you know this person?

GENERAL CHARLES JOHNSON : I don't know the person myself, but I know that she is a member of the South African Police service and as far as I know last that I
20 know of is that she is employed in the Human Resource development [training division of the South African Police services].

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ADV ADILA HASSIM: Do you know that she is also a founder and a executive chairman of Rebafanja NGO?

GENERAL CHARLES JOHNSON : I don't know.

ADV ADILA HASSIM: Do you know that Rebafanja is one of the NGO's that
5 received patients as a result of this marathon project?

GENERAL CHARLES JOHNSON: It's correct, Justice. To my knowledge, they received approximately 100 patients.

ADV ADILA HASSIM: That is correct it is in fact reported in this article that Major
General Malebe Thema reportedly received 270 thousand rand for 100 patients.
10 That is the allegation that is made in this article, the allegation that is made is also that she was in, she has resigned from the SAPS and was reemployed in March 2016, after police commissioner Kgomotso Paklane took office. Are you aware of that?

GENERAL CHARLES JOHNSON: No Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Can we just qualify
15 this article, I see a date at the top which appears to be today's date, but I don't see...

ADV ADILA HASSIM: The date of the article?

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: The date of the
20 article.

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ADV ADILA HASSIM: It is under the byline of the journalist Justice. The date on the top is because it was printed today, that is what the date on the top is. But underneath the photograph at the bottom of the page, of the first page.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Yes, what date
5 should I look at?

ADV ADILA HASSIM: 16 February 2017.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: And what is just
above daily maverick there is 26th October 2017, do you see that?

ADV ADILA HASSIM: Yes,

10 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** What does that
mean?

ADV ADILA HASSIM: That is the day that this was printed, at 12:11 this morning or
this afternoon.

15 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** No, if you go to the
title daily maverick just above it, it has a date that is what confused me.

ADV ADILA HASSIM: Sorry, Justice. I was looking at the higher date.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: 26 October 2017,
can you see that?

20 **ADV ADILA HASSIM:** Yes, it's the date on which the website was accessed in
order to search for this article.

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ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: And the date of the article is purportedly 16 February 2017.

ADV ADILA HASSIM: 2017 yes.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: So you have been
5 following this discussion general?

GENERAL CHARLES JOHNSON : I do Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: We are trying to make sure that you know what you are dealing with, what document are these. And is it allegedly derived or accessed from Daily Mavericks website?

10 **ADV ADILA HASSIM:** Yes, that is correct. So the first date, the date immediately above Daily Maverick 26 October 2017 and the time stamp is 12:08, that is the time on which it was accessed online on the Daily Maverick website. And then right on the top of the page the date that is on the right top hand corner is today's date with the time stamp 12:11 and that is the time which it was printed.

15 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** Thank you, it does help. And is Marian Than the writer of the article?

ADV ADILA HASSIM: She is the author of the article yes.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Thank you. You may proceed council.

20 **ADV ADILA HASSIM:** Sorry Major General, we were just confirming you that Rebanfanja receive about a 100 patients. One of the patients that was at Rebanfanja

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is a diseased with family we represent Christopher Marogwane. The article also refers to this police officer as having been stationed and in fact, she said she is the first black police, black woman officer stationed at Africeville. Are you aware of any disciplinary proceedings or criminal charges that are pending against this police officer?

GENERAL CHARLES JOHNSON : I'm not aware of any of that Justice.

ADV ADILA HASSIM: In the context...

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Now in the above is the place we heard about located somewhere in Hammanskraal is that the place?

10 **ADV ADILA HASSIM**: I think that was Bopelong in Hammanskraal.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Remind me where.

ADV ADILA HASSIM: Justice if you look at the bottom of page 2. Right the last sentence, in fact, the last few words on that page, Malebe Temas Rebafenja based in Africeville in Tshwane, receive 100 patients and it turns over to say some of who was later transferred to Rebafanja center in Hennops river and another in Pelingdaba.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: I see that, thank you.

ADV ADILA HASSIM: So it wasn't just one facility, it was a cluster.

20 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE**: Remember MR Morogwane's evidence was going nears Hennops River to Africeville and Diepsloot.

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ADV ADILA HASSIM: That is correct. Major General...

GENERAL CHARLES JOHNSON: Sorry, I just want to rectify my previous statement relating to whether I know of any criminal or departmental charges. Sometime I'm not sure whether it was early this year or late last year, I was
5 approached by General Randy who is the cluster commander for George cluster, who requested me whether I will be able and willing to obtain a warning statement from the General, General Tema relating to a charge of criminal injuria and it emanated from a rade that she attended at a college in Oudtshoorn. Where she allegedly insulted some of the female officers on parade, but he phoned me later
10 and said that not the same day but at a later stage, that it's no longer necessary because Major General Mboto who is the deputy provincial commissioner of crime detection in the Western Cape took the docket and he will obtain the warning statement. So that is, I don't know whether that case is still pending or what happened to that matter.

15 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** But was that related in any way to the Marathon project?

GENERAL CHARLES JOHNSON : No, Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: So it was a criminal injuria allegation separate and removed from the current deaths we are dealing
20 with?

GENERAL CHARLES JOHNSON : That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Thank you.

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ADV ADILA HASSIM: It may be related to the incident that is described in this article on page two beneath the image of the website of the major generals website. It refers to a probe by the Western Capes Human Rights Commission, correctional abusing Police officers.

5 **GENERAL CHARLES JOHNSON :** I see that.

ADV ADILA HASSIM: Major general, we have pointed out to you this letter 28th March 2017 and that one of the concerns that was raised in the letter related to this particular police officer and allegations of corruption. In relation to the marathon project, is there an investigation that will be, you said you are not aware of it already
10 but will there be an investigation or charges brought against this SAPS Major General, in relation to the Marathon project?

GENERAL CHARLES JOHNSON: Justice if I'm presented with information and evidence that would justify investigation we will certainly do so.

ADV ADILA HASSIM: So this information has not been to your attention by your
15 team?

GENERAL CHARLES JOHNSON : No.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: And now that it has been brought to your attention, would this be a concern of interest in the team?

GENERAL CHARLES JOHNSON: It is a concern Justice. I think it I some time
20 buring 2014 or 2015 I'm not sure exactly, there was legislation before parliament relating to government employees doing business with the state. And some time

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early this year there was a directive prohibiting government employees and their close next of kind. Meaning spouses and children who live with you to do any business with the state that would amount to a serious miss conduct, which might lead to your dismissal of the government employment.

5 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** Of course here the point that the council is making to you, its really about finding out whether she ran the facility as the article alleges. That she received at her premises the two of them mentioned here over a 100 patients from Live Ensidmeni and whether any of them died while if you will in the custody she had created. And whether she received the
10 money that is alleged, [inaudible] article. So one has a reason to go and verify the facts, whether she gets over a quarter a million for the presence of the people who were on the premises. And whether there where any commissions on her part which was collected to the death of the people who were under her custody, when I say custody I mean care. That should be quite a legitimate territory for investigation,
15 isn't it?

GENERAL CHARLES JOHNSON : I agree, Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Whether or not she is a police officer.

GENERAL CHARLES JOHNSON : I agree, Justice.

20 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** And then of course what is true she is a police officer and why has no one investigated her with an

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article that appeared in February, why has nobody looked into that direction at all?

That to is a source, a reason for investigation isn't it?

GENERAL CHARLES JOHNSON : It is, Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Council?

5 **ADV ADILA HASSIM**: Those are all the questions from me Mr Moseneke.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Very well, thank you. Questions is going to be put to you by the representative from the legal aid from legal aid South Africa. Yes, council you may proceed.

10 **ADV NZAME SKIBI**: Thank you, Justice Moseneke. Major general legal aid South Africa is representing the survivor of the mental health care users, who survived during the marathon project. So I'm gonna put down some questions I am not going to take that long with you.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Is it clear general what that refers to?

15 **GENERAL CHARLES JOHNSON** : I understand Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: So you understand that these people have not died but were part of the Marathon project.

GENERAL CHARLES JOHNSON : Yes.

20 **ADV NZAME SKIBI**: Major general amongst other things that you mentioned in your evidence was that a lack of corporation forms some of the official provincial

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department of health in Gauteng, your department where there any lack of cooperation, The police from the provincial commissioner?

GENERAL CHARLES JOHNSON : Sorry, what are the question your asking.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: The general had no
5 cooperation from police officers, is that the question? I'm not understanding it myself so I want to clear my mind.

ADV NZAME SKIBI: The question I'm putting is whether was there a lack of urgent on the part of the provincial commission to investigators to what was going on...

10 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** Commissioner from what provincial?

ADV NZAME SKIBI: Gauteng provincial.

GENERAL CHARLES JOHNSON : Justice the only answer that I can provide is based on the letters that was presented and referred to by the council, that was
15 forwarded to the provincial commissioner of Gauteng. And it was claimed that the provincial commissioner never responded to these letters, so if she never responded and replied to the letters then, of course, she neglected her duties.

ADV NZAME SKIBI: Who was the provincial commissioner of Gauteng province at the time?

20 **GENERAL CHARLES JOHNSON** : The provincial commissioner of Gauteng for the past two, two and a half years is Major General De Lange.

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ADV NZAME SKIBI: Thank you. Your scope of investigation in this which brings us here today during this marathon this project the Gauteng Marathon Project, are you only investigating the, or how big is the scope of your investigation?

GENERAL CHARLES JOHNSON : Justice, the scope of the investigation has a
5 special focus on the deceased persons. But that does not exclude the investigation of any crime that might emanate from our investigations relating on the investigation on the diseased individuals.

ADV NZAME SKIBI: From the evidence throughout we hear that the NGO's they to take some of these patients Mandela health Care users and even take them in,
10 even if they have exceeded the number which was, of which they was licensed to house in their premises. For instance, if I refer you to on this LA42, if gone through it and I see Masego Ngonono has got a lot quite a large number of diseased. If my calculations are correct it could be more I've I'm correct, but I'm just placing on the record that [inaudible]. Or the person who was in charge of Maseko home NGO is
15 he or she being investigated to any of the charges, as a result of what transpired in that NGO?

GENERAL CHARLES JOHNSON : Justice at this stage we are investigating the deaths of patients and we are not investigating at this stage the conducts of individuals which are not excluding in the course of our investigations. So we did not
20 identify or approach any individual as a possible suspect in a possible criminal matter, we did not at this stage.

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ADV NZAME SKIBI: In other words against somebody in charge of Maseko home is now criminal investigation of [inaudible] charges at least?

GENERAL CHARLES JOHNSON : No we did not register and we are also not investigating any cases of [inaudible] homicide, I tried to explain Justice, that in the
5 event of us obtaining prima-facie evidence of criminal, of course in consultation with the MPA, we will consider opening criminal charges and approach that individuals on the basis that they are possible suspects in the.....

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: What about the bulk of the deceased ... in which your prospects of opening inquests alone ... you
10 know that we hardly even buried ... we know that they have been certified by a variety of people in questionable circumstances and we know that therefore no post-mortems were conducted. What would be the fate of cases like that? If your interest would be only where you can open inquest dockets.

GENERAL CHARLES JOHNSON: Chief Justice, we have not been privileged to
15 that information that was provided now in this report from Section 21 where claims are made to specific individuals...

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: So they choose 27 instead of 21?

GENERAL CHARLES JOHNSON: Is it Section 27 instead of 21?

20 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** I'm not sure, maybe I have upgraded them.

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GENERAL CHARLES JOHNSON: Of course Justice, if – look we use the inquest and inquiry investigation as a starting point, and as the investigation progresses and we have evidence that this individual's negligent conduct caused the death of patients in his or her care. Of course we would and if we have inquest dockets, we
5 would convert these dockets to criminal charges of culpable homicide.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: You see, here is my concern – you have given us a list of people who have died and with the other lists you would compare to make sure that your lists are more accurate. Let's tick that box. Only in a small number – a quarter of the deceased almost, do you have
10 post-mortem reports – as for the rest you don't, and but for six or seven bodies – they are all buried. The obvious question is ... how are you going to upgrade your inquiries into dockets? 'MediHelp' or 'MediDockets', ultimately dockets for inquests.

GENERAL CHARLES JOHNSON: Justice, that is where the clinical and hospital records, medical records at Life Esidimeni and when the patients were transferred
15 to the NGO, up until their death is so important to our investigation. That I cannot over-emphasize, because we would then, based on what is obtained in those records – approach the pathologists for an expert opinion and then say – this is what we have for the life spent of the deceased whilst in the care of government facility and then in a NGO. You see it is possible that a person's health can
20 deteriorate in such a short space and isn't it possible that – based on the records – there are negligence. For example health care professionals are supposed to meticulously keep record of treatment, medication and the physical condition of their patients. So, if it was not done, then we will have to look at the health care

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professionals act to charge those individuals in terms of that. If the evidence boils down to neglect and negligence then of course we should consider culpable homicide. What I have read in some of the dockets for example is that a person dies of hyperthermia – now the little knowledge that I have of medical terms is that hyperthermia relates to exposure to weather conditions. So, if I have a patient in my care, there is an obligation on me to ensure that this individual is – especially the mentally disabled patient that does not know about how to care for him- or herself – it is my duty then to ensure that this person is not exposed. So, how does a person get hyperthermia in a house? It tells me that maybe the windows were open, the doors were open, the person did not get blankets and something like that. So, of course that indicates negligence and neglect.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: And prima facie, that could amount to culpable homicide?

GENERAL CHARLES JOHNSON: That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Somebody died, isn't it?

GENERAL CHARLES JOHNSON: That is correct.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: In appropriate cases that could amount to murder, where you are aware that death might ensue – you omit to protect a patient and death in fact ensues – then, at the very least, there would be a prima facie case to be answered by an accused person. So, let me go to my real question – will these inquiry files be worked on sufficiently hard, so that you

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can place them before the NDPP and require a decision on where the people should be charged? Whether for [indistinct] and smaller charges or for the main charge of murder – alternatively the charge of culpable homicide. Is that the plan?

GENERAL CHARLES JOHNSON: That is the plan and that is the strategy and Justice if what we require from the department and from Life Esidimeni are given to us and provided to us urgently, we might be in a position to fast track decisions into whether the individuals should be held criminally liable or not.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Yes, because General you know a year and a half almost have gone by if you take April May as a high point of the project marathon – we are now just about to start November and that is a year and a half and we still have inquiry files. Isn't it obvious that the longer we delay and that's a point that Advocate Hassim was putting to you – the less we are likely to have any convictions against those who might have committed offences?

GENERAL CHARLES JOHNSON: I agree with you Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Counsel...

LEGAL AID NZANE SKIBI: Thank you Justice Moseneke. Major General, the public outcry is immense – the victims – the mental health care users, who met their demise in this project, they were the most vulnerable. So now, can you change your position or you fast track your investigation to try to categorise these matters which occurred, instead of waiting – I heard in your evidence mentioning – when you were asked by Justice Moseneke, that your target now – where is it now? You've

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mentioned something like the end of the financial year, which is the end of March?
Are you not planning to categorise maybe to have different sections in you investigation, just to make sure that people are held accountable?

GENERAL CHARLES JOHNSON: Justice, I am of the view that the current team
5 are doing their level best to fast track. We have the challenges that I have spoken to
– we might have to consider increasing the members of the team, but still it might
not help to increase the team to 20 members whereas the documentation that we
need are not available.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: [indistinct] how do
10 you propose to get their records – what steps are you going to take?

GENERAL CHARLES JOHNSON: I was given a doctor's particulars by Professor
Magobba – I contacted this individual and I was informed he was no longer in their
employ of that facility or institution – this morning ...

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Is that Doctor
15 Magatsong(?)?

GENERAL CHARLES JOHNSON: I think so Justice. This morning the evidence
leader undertook to assist us with the contact person at Life Esidimeni, where we
will engage to set up a meeting and see how we can get their information, because I
believe information that I would receive is that their records were sent via some or
20 other link – I am not so computer literate to that department. So, maybe they should
even link us – otherwise we would need to go to their facility, access their files and
make copies for ourselves at their facility.

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ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Don't you want to spend your money – your budget – on making copies. If we don't get electronically on a link or make copies, the guilty may walk away.

GENERAL CHARLES JOHNSON: I agree Justice.

5 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** So you may have to rethink that General – should your money be very well spent I trying to hold people to be criminally accountable for their conduct – isn't that so?

GENERAL CHARLES JOHNSON: I agree here, but we've got this strategy measures that has been put into place in all government departments, but we will
10 prioritise and shift money, if need be – let's see whether they will give us a link with their information.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: And lastly on this point, of course as you say it is so important to advance – stay in contact with the evidence leader and if Life Esidimeni is not co-operative in allowing you to access
15 the documents – hopefully cost effectively and quickly, such as EG-on-A(?), an electronic link. Then they may be compelled to call them here – to come and tell us why are these records not available to you for the purposes of advancing this crucial investigation. My request – it is not a question – is that stay in touch with Advocate Ngutshana, so that we can facilitate as much as we can from my end for them to
20 give you access to those records. Any more questions Counsel?

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LEGAL AID NZANE SKIBI: Thank you Justice, yes, I have one or two. At ILA(?)42, page 13 – that is your report that you have prepared – you prepared in your evidence, didn't you?

GENERAL CHARLES JOHNSON: Are you referring to my report?

5 **LEGAL AID NZANE SKIBI:** Yes – let's just wait for Justice to ...

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Yes, you go ahead.

LEGAL AID NZANE SKIBI: Thank you.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: I remember much of the report.

10 **LEGAL AID NZANE SKIBI:** Thank you Justice. At page 13, with the sub-heading, paragraph 8, which deals with post-mortems – the last bullet point reads *'on all the inquiries, the inquiry files, no autopsies were conducted as the bodies were either being buried by families or NGO's'* – were any of the deceased buried by NGO's? Major General?

15 **GENERAL CHARLES JOHNSON:** That's what some of the investigations revealed – if need be, we will be able to provide the tribunal with the information relating to the deceased that had been buried by NGO's.

LEGAL AID NZANE SKIBI: Being buried by those NGO's – meaning being taken to their last place of rest or being contributed financially for their burial?

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GENERAL CHARLES JOHNSON: Contributed financially for their burial and the reels were being conducted by private funeral parlours – the NGO's never took bodies to cemeteries.

LEGAL AID NZANE SKIBI: All right.

5 **GENERAL CHARLES JOHNSON:** According to our information.

LEGAL AID NZANE SKIBI: From the evidence that has been lead here – or just before I go there, this will be my last point – what I would like to ascertain is whether the funeral parlours are being investigate or are they being investigated in any way?

GENERAL CHARLES JOHNSON: Justice, they form part of our investigation.

10 There is, for example, one funeral parlour to whom bodies were taken – I am not sure whether I have the correct name, but it is something like Put Me To Rest or Put You To Rest that transferred ...

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Let's rather keep it as Put You To Rest...

15 **GENERAL CHARLES JOHNSON:** I hope it won't happen soon. Justice, the information that we received was that bodies was transferred out of Gauteng to other provinces to be kept there. So, we are also directing our investigation towards Put You To Rest to see what was the reasons why they accepted so many bodies, so that they have to transfer them, under which conditions were these bodies
20 transferred and kept – so, that is part of our investigation.

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ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: And we know that by law you don't keep a deceased body wherever you choose, isn't it?

GENERAL CHARLES JOHNSON: That is part of the investigation Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: It must be licensed
5 premises.

GENERAL CHARLES JOHNSON: That's right.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Any further questions?

LEGAL AID NZANE SKIBI: Just the last question Justice ... the SIU, do you know
10 whether there are criminal charges or that they could be investigating?

GENERAL CHARLES JOHNSON: Justice, the SIU does not investigate criminal charges – their investigation relates to procurement procedures, mismanagement of government funds and the possibility of recovering the funds. Should during their course of the investigation they find evidence of criminal conduct, it is referred either
15 to us or to the Hawks for investigation. So therefore it was important that the team that I am coded 18 and the SIU worked together, which is currently been done. So, yesterday when we've interviewed the person from Precious Angels the members of the SIU were present.

LEGAL AID NZANE SKIBI: Thank you Justice – just the last, really last question.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Go ahead.
20

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LEGAL AID NZANE SKIBI: If you have a look at file number 3 – you have it in front of you.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: You don't have to apologise Counsel.

5 **LEGAL AID NZANE SKIBI:** I apologise Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Please go ahead and ask questions – you ask all that are relevant and useful for the inquiry.

LEGAL AID NZANE SKIBI: Yes – file number 3 – you have it in front of you.

10 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** I'm not sure – bundle 3, file number 3 ...

LEGAL AID NZANE SKIBI: Page 1130 – it's another passionate plea by one of the family relatives of the deceased,

GENERAL CHARLES JOHNSON: I am not there yet.

LEGAL AID NZANE SKIBI: Oh, you are not there? I am sorry about it.

15 **GENERAL CHARLES JOHNSON:** I am there now Justice.

LEGAL AID NZANE SKIBI: At paragraph can I go?

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Please proceed, yes.

20 **LEGAL AID NZANE SKIBI:** Thank you. At paragraph 3 – it is a letter dated 7th September 2016, addressed to Warrant Officer Mekare, who was working at the

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Attridgeville Police Station at the time. At paragraph 3 *'on arrival at the funeral home, Mrs Catello the owner of the funeral home advised us that there was 6 other bodies from Precious Angels housed at the funeral home – she stated that these bodies are all been brought to the funeral home more or less in the last month'*. Do

5 you agree that no matter what explanation might be given – are the funeral parlours allowed to keep the deceased bodies for such long periods?

GENERAL CHARLES JOHNSON: Well Justice, the only answer that I can provide is that in terms of health and hygiene it is not conducive to keep bodies for so long. I cannot answer for the private funeral parlours, but what I can respond to is that in
10 the government mortuaries we keep unidentified bodies for quite a while, whilst we are attempting to identify the body.

LEGAL AID NZANE SKIBI: From the reading of this statement, complainant is making a passionate plea about the urgency of having to for the [indistinct] inquest to be held. In paragraph 1 she refers to the first time it was on the 26th of August
15 when she made these pleas – that please, can this inquest be instituted? What can you tell us that you will do to fast track this [indistinct] although there is that took place at Precious Angels as well. I am aware of the fact that you already have difficulties that you have already [indistinct] to – the process you have to follow.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: What is the specific
20 question that you ask here? You need what assurance?

LEGAL AID NZANE SKIBI: The assurance that urgent steps will be taken to ensure that the inquest need your comments.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Yes – General?

GENERAL CHARLES JOHNSON: Justice, I am a bit reluctant to respond, but I will provide the following response that the institutions or NGO's where large numbers of people died is a priority, with the special focus on why and under what
5 circumstances. So, we have Precious Angels and we have CCRC, where lots of people died. It is not to say that we are not dealing with the other institutions, but I am of the opinion that we need to get to the bottom of why so many people at a specific place.

LEGAL AID NZANE SKIBI: Thank you Justice - no further questions.

10 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** Thank you.
Counsel Groenewald.

ADVOCATE DIRK GROENEWALD: Thank you Justice. General, let me explain to you what we've been hearing the last few weeks. The evidence is quite clear that the MEC, the HOD and Doctor Manemela was informed – they were warned – they
15 were told ... do not go ahead with this project – do not do it, there will be consequences. They persisted – they continued – they rushed the programme. With minutes of meetings, we starve, tell their superiors we don't have medicine, we don't have linen – we cannot function as a hospital was an institution. You know that the MEC knows about it, the head of department knew about it and then we hear
20 your evidence and your evidence tells us that we are busy with a general investigation, that there's no suspects, that there is no individual that been asked to give a warning statement – so, the perception of the families whom I represent is

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that the kingpins – the masterminds – they are not cornered and they are not being held accountable, because you are investigating the circumstances of the deaths per se. So, your investigation is not focused on the people who are actually responsible for their deaths, and I would just like you to comment on that and to tell us to which extend can you give us the assurance that these high ranking officials will be held accountable.

GENERAL CHARLES JOHNSON: Justice, the only answer that I can provide is that – if we have and we come across evidence that implies that the conduct of specific individuals – no matter who they are – boils down to criminal conduct, we will of course investigate them. I don't want to comment on the process of what transpired and why people were moved – I think people should be held accountable for that, in whatever form – administratively also, but my focus will be on whether this people can be hold criminally liable for their conduct. So, the guarantee that I can provide is a tribunal that I will do anything in my power to ensure that thorough and proper investigations are being conducted as speedily as possible.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: But the sharp end of the question is this as Counsel has just put to you is – we have undisputed evidence that has been tendered under oath before this tribunal. There are at least 4 known decision makers were warned – the MEC, the health department, the head of department, the head of mental health care and the head of the project leader of the project marathon. The experts and other people have warned him that death might ensue or [indistinct] might ensue and that they nonetheless made the decision to go ahead and in truth and in fact death did ensue and Counsel is saying he

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doesn't hear you saying these are suspects and would like you to get warning statements from them – that is his concern. He says your evidence of a general investigation of deaths and he is saying we know who gave the instructions – why aren't these people suspects = the criminal prosecutors?

5 **GENERAL CHARLES JOHNSON:** Justice, that's the reason why I have made the decision that as soon as it is possible for me I would want to approach the tribunal to obtain that evidence that was lead before the tribunal, discuss with the prosecuting authority, whether we should then proceed with any criminal charges against those individuals and as I've said, maybe it is an omission on my side – I
10 am not sure to approach the tribunal earlier – as soon as I became aware of the evidence that was lead here, but my viewpoint was get the tribunal to conclude their business and then approach – I didn't want to interfere with the proceedings.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Of course you know that the record of these proceedings – if asked for by you, the evidence will be
15 made available to you.

GENERAL CHARLES JOHNSON: That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: We have the records electronically, visually, on audio and visually and in a transcribed form. So, that is available General – it is all there. Maybe we can charge the Police a little
20 commission for that, but it is all there – the facts are there and I hope you will access them.

GENERAL CHARLES JOHNSON: I will definitely Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Yes. Counsel?

ADVOCATE DIRK GROENEWALD: Thank you Justice. You see General, I just want to explain to you – I mean, the purpose of these proceedings are, amongst other, is for the family members to find closure. They can only find closure is that
5 they know that the people who was responsible is held accountable and unfortunately, your testimony doesn't provide that assurance to these family members. Now, I cannot force you to conduct an investigation the way that the family members would like – you have the knowledge and you have the skills, but on behalf of these family members, I plead to you to go and investigate these
10 specific individuals.

GENERAL CHARLES JOHNSON: Justice, I give the insurance that as soon as we obtain the transcripts material from this tribunal we will investigate the individuals that are implicated outside of this investigation that we are currently busy with.

ADVOCATE DIRK GROENEWALD: Thank you very much General. General, then
15 there is just a few general clarification questions. I would just like to stand – perhaps you have explained it, but perhaps I just didn't understand you – you referred to some instances that the information is still outstanding is an expert opinion ... what is that expert opinion – what does that entail?

GENERAL CHARLES JOHNSON: It entails qualified medical experts, who would
20 scrutinise the records that are in our possession – that would also look at the post mortem reports and then provide an opinion in their expert view as to what could

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have possibly caused the death - whether negligence was a contributing factor to that.

ADVOCATE DIRK GROENEWALD: And those experts – are they part of your forensic science laboratory individuals – they are employed by the SAPS?

5 **GENERAL CHARLES JOHNSON:** No, they are employed by the department of health.

ADVOCATE DIRK GROENEWALD: Department of health.

GENERAL CHARLES JOHNSON: If need be – we can employ the services of independent specialists and experts.

10 **ADVOCATE DIRK GROENEWALD:** Thank you for that clarification General. General, to be quite honest – your response, your testimony that the department isn't co-operating, is to say the least shocking – not on your part, but on their part, because each and every day of these proceedings, we are given the assurance by the department that they are co-operating and that they are doing everything they
15 can to assist and to see that this will never, but never again happen. And, I would just like to confirm the lack of co-operation – is it only limited to the documentation that they do not want to provide or does it extend to further actions?

GENERAL CHARLES JOHNSON: It's documentation Justice and then statements that we need obtain from individuals from within the department, but our main
20 concern relates to the documentation, because we can always later obtain statements, but it is crucial for us that we obtain the documents, the clinical files, the medical records, so that we know where are going with the investigation and it

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seems that after we have served the subpoena their co-operation deteriorated – but, as I've said since we have served ...

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Is that the section where you've served the subpoena on the HOD?

5 **GENERAL CHARLES JOHNSON:** That is correct Justice, So, now we have to work through an attorney, a firm of attorneys to get information from the department and that is challenging to us.

ADVOCATE DIRK GROENEWALD: What would you say General – you are an experienced investigator and in your experience and in your opinion – what is the
10 reason why somebody would not like to co-operate?

GENERAL CHARLES JOHNSON: I want to give an honest answer to the tribunal.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: I trust that all your answers had been honest.

GENERAL CHARLES JOHNSON: It is all honest answers, but this one must be,
15 because it is a challenging question – it must be more honest.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Yes.

GENERAL CHARLES JOHNSON: Justice, the only reference that I can make, based on my experience as a forensic investigator since 1979, is there is something to hide.

20 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** That is just about the time that I became a lawyer, so you and me have over 40 years of service.

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GENERAL CHARLES JOHNSON: I am not retired yet as you.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Yes General, as you were saying?

5 **GENERAL CHARLES JOHNSON:** I am saying – based on my experience – the only reference that I can make is there is something to hide.

ADVOCATE DIRK GROENEWALD: Thank you for that General, I mean for the families that is quite concerning, because you know that question – the bona fides of the department – with all due respect – that’s an issue for argument, but be that as it may – there is, have you been provided with (through your investigating team)
10 have you been provided with a list of names of the individuals who formed part of the project team?

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: That is a project team within the department of health?

ADVOCATE DIRK GROENEWALD: Yes, within the department of health

15 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** Okay.

GENERAL CHARLES JOHNSON: Not as far as I know Justice – I’ve never seen a list. I am the NCO in there and the individuals that form part of this project, but I’ve never seen a complete list of the whole project team – who is the project leader and team leaders, who is responsible for what and implementing the project – I’ve never
20 seen such a document.

ADVOCATE DIRK GROENEWALD: You see, the evidence we've heard from the department is that there is good co-operation and one can only just think that they should have provided you with a list of names, indicate to you who are the people that is involved in this project – to what extend were they involved and to what
5 extend should they be investigated. Do you want to tell me they've done nothing of sorts?

GENERAL CHARLES JOHNSON: I can't for a fact state that – the only thing that I say and what we must understand is that I've said that I inspected the case dockets quite a time ago, so I am not [indistinct] today of what other evidence are in the
10 possession of the team, but what I can state as a fact is that I never saw such a project document or project plan reflecting names.

ADVOCATE DIRK GROENEWALD: You see sir, this document – according to me – is extremely important, because this identifies exactly who was responsible for the clinical specialists, who were responsible for the mental health unit, who is
15 responsible for the infrastructure, the finance, so, this is the document that will tell you go and ask that individual the correct questions and it is a great concern that the department is not providing that information to you and I will do my best to provide you with this list and document, which is now part of the audit in any event, because these are the individuals that needs to answer. General, the last issue, or it
20 is not a question per se – Mev Sandra de Villiers testified here earlier (she is the sister of the late Jaco Stoltz who died at the CCRC) she already went as far back as the 24th of October 2016 – she laid a complaint or charge at the Cullinan Police Station and she testified that up until today (well up until the day she testified) and

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she hasn't even been contacted by the SAPS. Now, surely you will agree that is cause for complaint, cause for concern by the family members.

GENERAL CHARLES JOHNSON: I agree Justice.

ADVOCATE DIRK GROENEWALD: Can we get your assurance that you will
5 contact her?

GENERAL CHARLES JOHNSON: If I am provided with her contact details, I will surely do so Justice.

ADVOCATE DIRK GROENEWALD: Thank you Justice, we have no further questions. Thank you General for testifying.

10 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** General, we are dealing with South Africans that are grieving because of the 141 dash(inaudible) and from the questions put to you refer to that there is an apprehension – there is a fear that there will be no criminal accountability. That these will be deaths that with regard that nobody will be criminally held accountable. What do you want to say
15 about that?

GENERAL CHARLES JOHNSON: Not on my watch Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Not on your watch? It was hard for me to hear you this morning and to hear your determination on the work that you have done and how you put it all together in one place – sitting here
20 as **ARBITRATOR JUSTICE MOSENEKE**, it gives me a ray of hope and it is just so important General that our citizens, those particularly grieving. All others, as you

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know, are watching this. There is a crime committed in our land – that sufficient officials and the many generals we have who cares – who will go out there and catch those who have committed a crime. So, from all the Counsels questions, what you have to take away is the deep concern that nothing might happen – that you
5 gave me hope when I looked at your report and I looked at the work that you have done and we need you to go out there General and disproof this suspicion, and I would like you to express yourself on that – it is important for the people who are here and for the people of the country – I think that we hear what you are saying.

GENERAL CHARLES JOHNSON: Justice, what I want to say is that my
10 commitment is especially to the families is that I will do everything in my power to ensure that thorough Police investigations – firstly into the deaths of their loved ones are being conducted and secondly that our investigations are also targeted at individuals who negligently or intentionally caused this crisis and we will do our investigations impartially and to the best of our ability, What, however, everyone
15 should remember is that the ultimate decision to prosecute in any matter does not rest with me. My duty is to investigate and to provide evidence to the prosecuting authority that will enable them to make an informed decision whether to prosecute or not and that I can ensure that we are going to do. Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: That is what we
20 would like to hear and the second thing is – the families that are here, we have lawyers and representatives and committees and so on – do you envisage to work with them? When you look at the correspondence just put to you, you almost get a sense that Section 27 of maybe also Solidarity and we were seen as the enemy –

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let us not respond to their request ignored – are you going to try and take advantage of the obvious information that they have? They've been working with this thing for the last 2 years almost and they have a lot of information to open up your way and make it easier. Do you see your way clear to work with them in order
5 to get to the truth?

GENERAL CHARLES JOHNSON: Justice, when this tribunal started I said to myself this is a gift from above, because these individuals who would assist us to get to the families – to get other evidence and so on – based on what I saw on TV, so of course and it will also short circuit this delay of information that we have from
10 the institutions and the department. It might short circuit and give us direct access to what can assist with the investigation. So, I would gladly provide my contact details to whoever wants it and the contact details of the investigation team leader, so that we can interact with each other to speed up the process.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Thank you for that.
15 Counsel for the State. You will be happy to know that this is the last Advocate to ask you questions.

ADVOCATE TEBOGO HUTAMO: Thank you Justice. Major General Johnson, good afternoon.

GENERAL CHARLES JOHNSON: Good afternoon sir.

20 **ADVOCATE TEBOGO HUTAMO:** Do you know who is the current head of department – of the department of health, Gauteng?

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GENERAL CHARLES JOHNSON: What I've heard, it's Doctor Kenoshi I'm not sure.

ADVOCATE TEBOGO HUTAMO: You have testified that you have started the investigation during May 2017 – is that correct?

5 **GENERAL CHARLES JOHNSON:** The investigation task team was formed the 19th of May 2017 – my involvement with this started during February when I interacted with Doctor Lebetho.

ADVOCATE TEBOGO HUTAMO: It was earlier than May 2017?

GENERAL CHARLES JOHNSON: That is correct.

10 **ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** Yes. Counsel?

ADVOCATE TEBOGO HUTAMO: And at the time when you were interacting with Doctor Lebetho was for purposes of investigating the matter, not so?

GENERAL CHARLES JOHNSON: As far as I know Judge – at that time a few cases were under investigation in a fragmented way at various Police Stations –
15 investigating officers not knowing about each other and not working together. So, when the Ombudsman's report was released, it worried me – I made enquiries at the Police Stations in the provinces relating to investigations that we might have. So, I was worried that – seeing that so many people died, that at one stage or another, I will be approached to account on what we as the Police are doing and
20 therefore I took the initiative to start the process of engaging the department, speaking to the health Ombudsman, obtaining his report – informing the deputy

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provincial commissioner of Gauteng – listen we have to do something with this investigations. I got the assurance that the provincial office is dealing with the matter, that was what I was informed, but I was not happy with the response and therefore I initiated the task team. Not to cover any tracks of me, but to ensure that we do justice to the investigation. That was my main and sole purpose.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Counsel

ADVOCATE TEBOGO HUTAMO: You have just indicated that it is wrong that you have read the dockets in relation to matters under your investigation. Can you just give an indication, when was the last moment that you have read the dockets?

10 **GENERAL CHARLES JOHNSON:** I cannot provide a date, unless I go and look at the dockets itself, but I would think it might have been 3 months or more – 2 or 3 months after the team started that I looked at the dockets.

One must understand that I am functioning with 4 Brigadiers under my command and other officers, Colonels, Lieutenant Colonels, so it cannot be expected from me due to the vastness of my responsibilities, to do that work. Why I read through the dockets, is I wanted to make sure that I understand the dynamics and so that I can during my briefing sessions with the team, try to direct and guide them without physically inspecting the dockets, so I've got a Brigadier who is working together with the team who is expected to regularly inspect the dockets and if necessary, provide guidance, so I only saw the dockets that we were busy with at that stage about 3 months into the establishment of the team and that is why I increased also the membership of the team.

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ARBITRATOR JUSTICE MOSENEKE: Counsel that's your answer.

ADV TEBOGO HUTAMO: Can I get your recollection to you are saying that the last period could have been around July of this year?

5 **ARBITRATOR JUSTICE MOSENEKE**: Well 3 months from there, if the team was set up in May, so it would be June, July, August, around August.

MAJOR GENERAL CHARLES JOHNSON: Judge it should have been around about the first or second week in August because for most of July, I tried to enjoy my annual leave.

ARBITRATOR JUSTICE MOSENEKE: No fair enough.

10 **ADV TEBOGO HUTAMO**: Thank you. Let's just go back to your first interaction with Dr Lebeta on 24 February 2017. Your testimony was that you made a request of certain documentation to be given to you and an undertaking was made that you would be provided with those documents. Was there any list that was given to Dr Lebeta of what was required?

15 **MAJOR GENERAL CHARLES JOHNSON**: I gave the doctor no list. We had an informal meeting, it was our first meeting. I think I have a register at my office where I made notes of the meeting. I requested the doctor, is it possible that I could be provided with a name list and particulars of all the patients that have been removed from Life Esidimeni and to where they were taken. I got the indication that he told
20 me that that is possible to provide me with the list. I asked the doctor whether it's possible that we could access the files, medical files, clinical records of these patients that have been transferred and he indicated to me, that it is possible. We

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did not agree on a timeframe, but I phoned the doctor about a week or two after the meeting and then asked when will, I be at least getting the name list. It was then that I was informed that that information I should now request in writing through the head of the department or the DG I'm not sure.

5 **ADV TEBOGO HUTAMO**: Major General, do you consider the request to be lack of cooperation on the part of the Department?

MAJOR GENERAL CHARLES JOHNSON: No Justice that is not part of the lack of cooperation. The lack of cooperation comes in long after that. It came in when the team requested at meetings and through telecommunication certain reports, that's
10 where the lack of cooperation comes in. As I also indicated, Dr Lebete I got the impression that he is willing to cooperate, that is the impression that I got and we met for about three quarters of an hour, so if I don't know what transpired between our meeting and our conversation by phone as to when I could get it, I don't know what happened, why all of a sudden, I was going to write to another individual
15 whom I don't know. So I didn't regard that as lack of cooperation, but the interaction afterwards between the Department and the team, that is lack of cooperation and it deteriorated to such an extent that we had to use the law to get the Department to partially cooperate. Up until today, they did not fully comply with our requests.

ADV TEBOGO HUTAMO: Thank you Major General, you have just confirmed that
20 there was no lack of cooperation from Dr Lebete after your request even though you were requested to make the request in writing and according to your evidence, you said that you did not make such a request in writing after being advised, so why did you not adhere to the request so that you can be attended to?

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MAJOR GENERAL CHARLES JOHNSON: I found it unreasonable that I interacted with a higher ranking official of the Department who gave verbal commitments and now all of a sudden, the goalposts have been shifted to a written request to an individual whom I did not interact with, so I thought to myself, this is
5 totally unnecessary, because it's going to delay processes. Then the team was formed and I left it up to the team leader to deal further with the Department and then report back to me. So the decision to issue the Section 205 subpoena on the Department was not likely taken. It was a decision that we had to take because of the lack of cooperation at that stage from the Department.

10 **ADV TEBOGO HUTAMO:** Thank you Major General. Before we get to the formation of the task team and the issuing of the subpoena, I just want us to settle this aspect relating to your interaction with Dr Lebete. To whom, were you requested to direct your written request?

MAJOR GENERAL CHARLES JOHNSON: Dr Mbete informed me send your
15 request to the Head of the Department. He didn't give me a name or he might have given me a name but I can't remember.

ADV TEBOGO HUTAMO: Is the Head of the Department not supposed to be official, the most relevant official to be of your assistance in the conduct of your work?

20 **MAJOR GENERAL CHARLES JOHNSON:** Justice it might be so, but now here I have already interacted with a senior official of the Department who indicated to me that it is possible for him to provide me with the information, so I thought it is

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unnecessary to bother higher a higher authority with things that can be settled at lower level for progress sake.

ARBITRATOR JUSTICE MOSENEKE: Counsel I don't know where we're going, but you're going to tell us. I don't understand the witness to be saying there was
5 lack of cooperation with Dr Labete, I thought the General made that clear in that it occurred in the next phase when the team sought a variety of documents and was rebuffed and it became so serious, that it led to a Section 205 subpoena. Now is it your proposition to the witness that Dr Lebete was not cooperative?

ADV TEBOGO HUTAMO: It is not the proposition which I intend to make, I just
10 want to take through the witness so that he can actually clarify what was the stumbling block from the evidence that he has given. It is on record that the Department has given indication that it has been cooperating with relevant institutions in order to deal with these matters, so as I've said, an impression should not be made that the government is not cooperating.

15 **ARBITRATOR JUSTICE MOSENEKE**: No that's fine.

ADVOCATE DIRK GROENEWALD: Justice I need to object to that. My learned colleague here is suggesting that the State is cooperative. The hard facts and the evidence is that they are not cooperative, so if he wants to challenge it, he must bring a witness that says there was no 205 subpoena issued and they have fully
20 complied, they have provided the documents, so I am objecting to the way in which he poses his questions.

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ARBITRATOR JUSTICE MOSENEKE: Ja of course we can't stop Counsel from enquiring into the evidence. He might very well put it to the witness that in fact, the Department cooperated, but he must do that by propositions and questions. The evidence before us, is that the Department did not cooperate and a [inaudible] mechanism had to be used, so I think you get to get there sometime with the other Counsel. I know it's a matter of concern, the Department, but you've got to get to it ultimately. As I understand the evidence, Dr Lebete was not the problem. The problem came later, you may proceed?

ADV TEBOGO HUTAMO: Thank you Justice. Major General you have given testimony that when you deal with investigations relating to death, it becomes necessary that such investigation should be treated urgently. Is that how I understood your evidence?

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice.

ADV TEBOGO HUTAMO: And in those circumstances, once you have been tasked with that investigation, you have to move with speed not so?

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice.

ADV TEBOGO HUTAMO: And you have just testified to the issuing of the subpoena. Is it not a mechanism which is available to you if you do not receive the documents which you require at the earliest moment?

MAJOR GENERAL CHARLES JOHNSON: Justice I am not saying that the Department totally did not cooperate. We received documentation, but not what we required and requested, not all the things that we requested, so you request, you

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request, you request, you engage, yet what you receive is not even a quarter of what you asked, so now, in order for us to go the way of a Section 205 subpoena, I have to convince the prosecutor and the magistrate that I went out of my way and I applied many means to obtain the required information and yet it was not
5 forthcoming and therefore I now want to approach the court so that a magistrate can assist me through the law to obtain this information that I so urgently need. So as I said previously, it wasn't a decision that we took lightly, based on the fact that these are two government departments which are supposed to work together, so it was really not a decision that we took lightly.

10 **ADV TEBOGO HUTAMO**: Your task team was found on 19 May 2017, is that correct?

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice.

ADV TEBOGO HUTAMO: And as of 24 February 2017, you were already in need of documents which will enable you to conduct your investigation not so?

15 **MAJOR GENERAL CHARLES JOHNSON**: Justice at that stage as I said, a few dockets were under investigation in the province, so it wasn't my responsibility at that stage, but because of what I read in the Ombudman's Report and over the news that there is a lot of people that died, I deemed it my duty to start looking at the possibility of creating a team. I interacted with the Deputy Provincial
20 Commissioner who is responsible for crime investigation in the province and told her General Motsepe, we have to look urgently at this matter it is under control, so I told her I am going to meet with the Department to see whether I can get a

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complete list of people that have been transferred. Then we go through a process of elimination who is still alive and where are those people taken to. Who died, at what institution and where are the bodies now, so that was the purpose of me requesting a name list and based on what the name list indicated to us, we would
5 have formed this task team much earlier.

ADV TEBOGO HUTAMO: Thank you. You testified that after the formation of the task team, you then approached Life Esidimeni where you met with Rick Martin. Do you remember when, was that meeting?

MAJOR GENERAL CHARLES JOHNSON: I never met with anybody of Life
10 Esidimeni. The team met with representatives of Life Esidimeni, so the last interaction that I had with anybody relating to the Life Esidimeni issue personally where I met people, was with Professor Magobo. I also undertook to him that we will establish this team, we will investigate based on his report and I will provide him with progress reports. Now I provided the Health Ombudsman with one report thus
15 far and that was last month. The team provides me with a weekly updated report of their activities and they provide me with a monthly progress report based on where we are standing, so I provided the Health Ombudsman with a copy of the last month's report with an undertaking that and it is not necessary for me to do it, but with an undertaking that I will provide him with monthly status reports on the
20 investigation, just out of courtesy and because he is the Health Ombudsman.

ADV TEBOGO HUTAMO: Who on behalf of the team and when did they meet with Life Esidimeni?

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MAJOR GENERAL CHARLES JOHNSON: That information I will have to verify with the team leader Justice.

ADV TEBOGO HUTAMO: However you were informed that police were required to make payment of the records?

5 **MAJOR GENERAL CHARLES JOHNSON:** That's what the team informed me. The message that I received from the team or the briefing, is that whenever they made contact with a person representing or working at Life Esidimeni, soon after the conversation is terminated, they will receive a call from the attorneys, I hear you contacted my client and you requested this and that, you request must be directed
10 to me or to my office and you will pay for information.

ADV TEBOGO HUTAMO: You considered the documentation in possession of Life Esidimeni of critical importance in your investigation, not so?

MAJOR GENERAL CHARLES JOHNSON: It is of critical importance Justice. Look, what we were informed or what the team was informed by Life Esidimeni, is
15 all this information that you want from us, we have already provided it to the Department, go and get it from them. Now the Department is not coming to the party fully, so we re-approached Life Esidimeni in the hope that we will get the information from them. Now in both instances now, we must work through attorneys to obtain information that we are legally obliged to be provided with, because it is
20 evidence that may be used and that can maybe prove the commission of a crime, so we as the police, in terms of the Criminal Procedure Act, can go and seize this documentation if we so wished with a search warrant.

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ARBITRATOR JUSTICE MOSENEKE: Counsel will you in due course, be putting it to this witness that no Section 205 subpoena was issued against the HOD of the Department of Health?

ADV TEBOGO HUTAMO: No.

5 **ARBITRATOR JUSTICE MOSENEKE**: You will not be, you are not contesting that fact?

ADV TEBOGO HUTAMO: No.

ARBITRATOR JUSTICE MOSENEKE: Very well, you may proceed?

ADV TEBOGO HUTAMO: Thank you.

10 **ARBITRATOR JUSTICE MOSENEKE**: And that that person was Dr Kenoshi, you will not be putting it to the witness that it was a different person?

ADV TEBOGO HUTAMO: No Justice.

ARBITRATOR JUSTICE MOSENEKE: No, that's not part of your case very well.

ADV TEBOGO HUTAMO: Was there no need for you to have proceeded to issue
15 the subpoena against Life Esidimeni in view of your knowledge that they were in possession of the documents yet they required you to make payment?

MAJOR GENERAL CHARLES JOHNSON: Justice I think that we would have difficulty to convince a magistrate to issue a Section 205 subpoena on Life Esidimeni. Life Esidimeni-

20 **ARBITRATOR JUSTICE MOSENEKE**: We can cut to the chase isn't it?

MAJOR GENERAL CHARLES JOHNSON: We can do that.

ARBITRATOR JUSTICE MOSENEKE: They said the documents are available provided you pay for copies.

MAJOR GENERAL CHARLES JOHNSON: We can do it Justice. The issue is that
5 their version might be look, all the information that we have, we have given to the
Gauteng Department of Health, which is a government institution, why do you come
to us and want to subpoena us for documentation that is in possession of the
government. So get it from the government, I think we would have difficult to
convince a magistrate to issue a Section 205, but it's not impossible, we might do
10 that.

ARBITRATOR JUSTICE MOSENEKE: And they gave you a second alternative
didn't they?

MAJOR GENERAL CHARLES JOHNSON: They did.

ARBITRATOR JUSTICE MOSENEKE: That you may come and copy the records if
15 you want to.

MAJOR GENERAL CHARLES JOHNSON: That's right Justice.

ADV TEBOGO HUTAMO: Why have you not taken that offer which was given to
you, in light of the importance of the information that you sought?

MAJOR GENERAL CHARLES JOHNSON: Justice there is now a legal process to
20 compel the Department to provide us with the information, so I don't see it as
necessary now to go to Life Esidimeni to get that documentation. There is a court

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process where hopefully on the 6th of December or before the 6th of December, we will be provided with all the information, failing which a court will make a decision as to what should happen further.

ADV TEBOGO HUTAMO: Major General the question was why did you not take up
5 the offer given to you by Life Esidimeni relating to the documents?

MAJOR GENERAL CHARLES JOHNSON: As I said Justice, it's going to be time
consuming and it's going to be costly for me to go and make copies there at this
stage and their demand that we will have to pay if they provide us with copies of the
information, so here is a government department that has the documentation. If they
10 don't have the budget to make copies, tell us, we don't have a budget, bring your
own photostat machines and your own paper and your own human resources to do
the copies, we would have gladly done it, but nothing was forthcoming in that
regard.

ADV TEBOGO HUTAMO: Major General with regard to that ability on your part to
15 make available paper and so forth, why did you not take up the offer given to you by
Life Esidimeni because you say if the government expressed its disability to make
copies, you would have made arrangements yourself to bring paper and make
copies, yet another institution with the required information gives you an offer and
you decline it. Can you give any explanation to that conduct?

20 **MAJOR GENERAL CHARLES JOHNSON**: There is a court process in place that
hopefully will compel the Department to provide me with that information that I
require, so I didn't see it necessary, seeing that the Department in court on 3

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occasions with the court finding it necessary to give a final remand until the 6th of December, so I didn't see it necessary for me now to go to Life Esidimeni and get information whereas hopefully the court will compel them to give me that information.

5 **ARBITRATOR JUSTICE MOSENEKE**: Counsel is it the case of your client that they have provided the information requested?

ADV TEBOGO HUTAMO: Indeed so.

ARBITRATOR JUSTICE MOSENEKE: Well you must put that to the witness, we have to get there, you have to put your case to the witness so that the witness can
10 respond to it substantially. You have to say what is, the case of the province, so that this witness has the opportunity to agree or to rebut and questions must be directed towards [inaudible] one's case or refuting what the witness says and I am sure you will get there some time. You have all the time in the world, but it helps everybody [inaudible] in an ADR process that we say what our case is, so the
15 witness can meet it head-on and say I haven't received the documents if that is your case or ever since the 205 subpoena nothing has been forthcoming and so on and so on, but let's get to the substance.

ADV TEBOGO HUTAMO: Thank you Justice. Major General in light of the subpoena that has been issued against the Department, we note that it was issued
20 in August. Can you just give an explanation why did it take such a long time on your part, in light of the urgency that the matter requires, for you to issue the subpoena after the formation of the task team in May 2017?

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MAJOR GENERAL CHARLES JOHNSON: Justice as I said, we are two government departments. We are using public funds to operate and to do our business, so we are now, the one department is begging the other department for information that would be of benefit to both departments. Now I cannot if the
5 Department upon my first request failed to comply, all of a sudden rush to the court and say I now want the Head of the Department to come and explain to the court why they did not do it. As I said, in order to convince the NPA and a magistrate to issue a Section 205 subpoena, I will have to prove what did I do, what efforts did I make and when did I do it and what was the non-compliance, because the Section
10 205 enquiry has serious implications for the individual that does not comply.

ARBITRATOR JUSTICE MOSENEKE: Yes including imprisonment.

MAJOR GENERAL CHARLES JOHNSON: Imprisonment that's correct Justice.

ARBITRATOR JUSTICE MOSENEKE: In my time, I have done a number of cases defending State witnesses who have been issued with Section 205 subpoena's, it's
15 coercive measure which is issued, the subpoena is issued after making out a case before a judicial officer in chambers, that it is necessary, so that is the jurisdictional requirement for it before it is issued and it will be interesting to see whether ever, the Section 205 subpoena had been issued against one State department against an official of another State department, it will be very, very interesting to see
20 whether it has ever happened in light of the constitutional requirements of cooperative governance. The constitution obliges State departments to work with each other, to cooperate with each other, so it is quite a stunning development where one department issues a Section 205 subpoena which may lead to possible

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imprisonment for a State official. But be that as it may Counsel, I think you have to continue to put your questions the way you deem fit.

ADV TEBOGO HUTAMO: Thank you Justice. Justice I beg leave to hand up a statement which is marked ELAH46. Major General have you seen this statement
5 before?

MAJOR GENERAL CHARLES JOHNSON: It's the first time I am seeing the statement Justice.

ADV TEBOGO HUTAMO: This is a statement made under oath by Dr Kenoshi in response of the subpoena which was issued. Let me take you to Paragraph 3 of
10 the document, which reads that on or about 2 August 2017, I was served with a subpoena in terms of Section 205 of Act 51 of 1997-

MAJOR GENERAL CHARLES JOHNSON: Which, is the wrong Act.

ADV TEBOGO HUTAMO: Yes I was also furnished with a letter dated 17 August 2017 in terms of which members of the South African Police Service requested
15 certain information. I am advised that the subpoena should be read with the letter and that I should provide the information requested in the letter. I have read the contents of the subpoena together with the aforesaid letter and wish to make a sworn statement in response thereto. Do you know if any of the team members have been provided with this document?

20 **MAJOR GENERAL CHARLES JOHNSON**: I don't know of it Justice.

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ADV TEBOGO HUTAMO: Then I am going to take you to Page 2 Paragraph 6 of the statement, which reads that it is well published that at the time of terminating the Life Esidimeni contract and when the NGO's were appointed, Dr T.E. Selebano was the Head of Department. Then the next paragraph, records that in the premises,
5 my failure to provide some information should not be construed as unwillingness and/or obstruction of the legal process. However, this is the only information I have gathered to-date and at my disposal. I rely solely on the findings of the Ombudsman together with the annexures thereto. Do you see that?

MAJOR GENERAL CHARLES JOHNSON: I see it Justice.

10 **ADV TEBOGO HUTAMO**: Then let me take you to Paragraph 18, it records that I also make available more clinical records of former Life Esidimeni patients who died while under the care of the NGO's. I record that, clinical records from some of the former patients of Life Esidimeni, who died, have already been released and made available to Lieutenant Colonel Ditabo. Do you know of that statement? Will you
15 dispute this statement, this paragraph?

MAJOR GENERAL CHARLES JOHNSON: No I cannot dispute it Justice. What I'm saying and my testimony the whole day is that the Department did provide some information and documentation to us, but not all the information that we requested was provided to us.

20 **ADV TEBOGO HUTAMO**: And then if we read further Paragraph 19, it says that I through my representation, am willing to meet with Colonel Ditabo and any member of the South African Police Service in order to do a reconciliation of the clinical

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records already in his possession and ascertain if further records are specifically required. What is your comment to that statement in light of your evidence that there is lack of cooperation on the part of the Department?

MAJOR GENERAL CHARLES JOHNSON: As I said Justice, it's the first time that I
5 see this document and I am sure that Lieutenant Colonel Ditabo also did not see
this document, but be that as it may Justice I want to give a response. Whether
there is now a little technicality relating to this 205 and compliance and so on, the
crux of the matter is a magistrate who is dealing with this hearing, found it
necessary to postpone the hearing until from the 18th of October 2017 to the 6th of
10 December 2017, based on the fact before the magistrate that the required
information had not been provided. That is the crux of this whole issue of this 205
subpoena. If by the 18th of October, the Department complied with the request for
information, the magistrate wouldn't have postponed this matter to December.

ARBITRATOR JUSTICE MOSENEKE: Well in Paragraph 22, could you look at that
15 General? Dr Kenoshi says I request that the warrant of arrest issued against me,
be cancelled. Was there a warrant of arrest that was issued against Dr Kenoshi?

MAJOR GENERAL CHARLES JOHNSON: Not to my knowledge Justice.

ARBITRATOR JUSTICE MOSENEKE: This seems to be different from the Section
205 subpoena.

20 **MAJOR GENERAL CHARLES JOHNSON**: The Section 205 subpoena if it is not
complied with, where there is no appearance, then of course it is the prerogative of
the presiding officer, to issue a [inaudible] 65 warrant of arrest.

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ARBITRATOR JUSTICE MOSENEKE: But you don't know the circumstances under which the warrant of arrest was issued here?

MAJOR GENERAL CHARLES JOHNSON: No I don't know, I was never informed that there was a warrant of arrest issued for any person relating to the 205. I mean
5 the matter has been remanded on the 18th of October to the 6th of December.

ARBITRATOR JUSTICE MOSENEKE: Paragraph 18 of course Counsel has referred you to that, the doctor says he makes available more clinical records of former patients who died under the care of the NGO's. I record that, certain clinical records from some of the other patients of Life Esidimeni who died, have already
10 been released and made available to Lieutenant Ditabo. Do you have any comment on that?

MAJOR GENERAL CHARLES JOHNSON: That we don't dispute Justice. We received some documentation, so I don't dispute that.

ARBITRATOR JUSTICE MOSENEKE: But of course the affidavit has several
15 headings which suggest almost like it was categories of documents which were asked for. The first part of the affidavit, Dr Kenoshi makes the point that he was not there and he doesn't have all the documents that the police require.

MAJOR GENERAL CHARLES JOHNSON: I see that Justice.

ARBITRATOR JUSTICE MOSENEKE: Look at Paragraph 9. He says that he has
20 no details of the project plan, but attaches a copy thereof which is provided by a colleague and also Paragraph 10, determination he says he has no knowledge and attaches a copy of the notice of termination. In several of the paragraphs of course

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he could not find documentation that was requested in the affidavit he says. Do you have any comments about that?

MAJOR GENERAL CHARLES JOHNSON: Judge I am going to maybe be-

ARBITRATOR JUSTICE MOSENEKE: It may be an unfair question on second
5 thought. A magistrate has to decide whether this affidavit meets the requirements of Section 205 ultimately isn't it?

MAJOR GENERAL CHARLES JOHNSON: That's right Justice.

ARBITRATOR JUSTICE MOSENEKE: It's an affidavit in the magistrate's court for the district of Pretoria. Counsel, please continue with your questions.

10 **ADV TEBOGO HUTAMO**: Thank you Justice. Major General you will note that from this affidavit, documents were provided to you in relation to some of the information that you have requested. I just want to get your response to the earlier question which I have asked you in relation to Paragraph 19, whether do you consider the undertaking made by the doctor to meet with Colonel Ditabo and any
15 member of the South African Police Service as an indication of lack of cooperation from the Department?

MAJOR GENERAL CHARLES JOHNSON: Justice I went through this or browsed through this statement quickly. The responses in my view, indicates that the person that disposed of this affidavit Dr Kenoshi as the HOD, does not take full
20 responsibility for what is happening in the Department. In my view, he shifts and I might be wrong, it seems as if he shifts the accountability and responsibility to previous persons. Now as a senior manager in government, I cannot assume a

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position and then when the heat is very hot in the kitchen, I say it's not my responsibility, it is my predecessor's problem. That is the one response that I would provide. The second response is that if Dr Kenoshi is willing and available to meet with us and we do an inventory of what we want and what they provided and what we still want before the 6th of December, we will gladly do so. But that does not mean that if we don't get the information that we require by the 6th of December, that the proceedings in the magistrate's court, would not proceed, because we urgently need the information that we require. So if at our meeting we don't get the information and I would want to be part of that meeting with the doctor, we are not going to budge on the basis that I don't know what happened to documentation, it's my predecessor's problem. If I take up a post, I must take up the post with all the responsibilities and be accountable for that.

ARBITRATOR JUSTICE MOSENEKE: When was the last postponement of the Section 205 proceedings?

15 **MAJOR GENERAL CHARLES JOHNSON**: It was the 18th of October until the 6th of December Justice.

ARBITRATOR JUSTICE MOSENEKE: So those proceedings happened whilst these arbitration proceedings were going on?

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice.

20 **ARBITRATOR JUSTICE MOSENEKE**: And this affidavit was deposed to on the 11th of September 2017, so it would have been under a month before we started with the arbitration. When do you say you made your request for this information?

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You would have made the request between, May 2017, when the team was set up, to August 2017, when the subpoena was issued?

MAJOR GENERAL CHARLES JOHNSON: That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you Counsel.

5 **ADV TEBOGO HUTAMO**: Thank you. Major General, I am instructed that the documents referred to in this statement, are referred to in different paragraphs as EK1 to EK7. These documents were made available to the police pursuant to the request made. Will you be able to respond to that assertion?

MAJOR GENERAL CHARLES JOHNSON: I will have to verify with the team as to
10 what of these documents that is reflected in this statement, we received and did not receive. As I said, it is the first time I see this statement, so I am not in a position to comment on whether we did receive or didn't receive it Justice.

ADV TEBOGO HUTAMO: And Dr Kenoshi has stated under oath that he has been interacting with one of your team members. Do you acknowledge that?

15 **MAJOR GENERAL CHARLES JOHNSON**: We don't dispute the interaction, we really don't dispute that.

ADV TEBOGO HUTAMO: And the contention made, is that these documents were made available to you. Will you dispute that?

MAJOR GENERAL CHARLES JOHNSON: I cannot dispute or testify that we did
20 receive it. As I said, it's the first time I see this document, I will have to consult with

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the team, go through the document with them, which of these things did we receive and when did we receive it.

ADV TEBOGO HUTAMO: One of my learned friends asked you a question as to whether do you know of the projects team members who were involved in the
5 Marathon Project. Do you remember your answer to that?

MAJOR GENERAL CHARLES JOHNSON: My answer was that I don't know them.

ADV TEBOGO HUTAMO: Can you please turn to Page 3 of the statement given to you, Paragraph 13, Paragraph 13 provides that whilst I cannot speak with authority, according to the report, the projects team was appointed by Dr Selobane and
10 comprised of the following members, do you see that?

MAJOR GENERAL CHARLES JOHNSON: I do Justice.

ADV TEBOGO HUTAMO: And the list starts from 13.1 to 13.23 and in respect of each official, their capacities are mentioned, do you see that?

MAJOR GENERAL CHARLES JOHNSON: I do see it Justice.

15 **ADV TEBOGO HUTAMO**: And this was provided to your team member, will you dispute that?

MAJOR GENERAL CHARLES JOHNSON: I cannot dispute or acknowledge it Justice.

ADV TEBOGO HUTAMO: Then if you say you are the Head of the task team and
20 you do briefings every Friday, information is being provided to your team members

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which you are not made aware of, then how do you then testify that there is no information coming forth from the Department?

MAJOR GENERAL CHARLES JOHNSON: Justice my response is I received this statement of the doctor today. I wasn't provided or given any time to read through
5 this statement. I read certain paragraphs as I was directed to certain paragraphs, so I am not in a position to say my team does have this documentation or not. What I am saying is, I will have to sit down with the team and ask them did we receive the documentation and information as reflected in this statement, when did we get it and from whom.

10 **ARBITRATOR JUSTICE MOSENEKE**: Ja which Counsel takes us to, well what we should always do, is identify and qualify documents isn't it? At the beginning, we should have said this is an affidavit by Dr Kenoshi on the 14th of September 2017 and tell all of us whether it was filed at the magistrate's court, was it served on the police, all of those would be relevant isn't it? Then we would know the proper status
15 of the document, but you have the opportunity to do it now. Was this filed in court? Was it served on the police? Did it reach the team? Did we know that and how do we ascertain that? I am happy that you provide it from the bar and if necessary we can pursue evidence if we have to.

ADV TEBOGO HUTAMO: Justice my instruction is that this statement was in
20 response of the subpoena which was issued against the doctor and the document was made available to court as well as the police and which is the reason why it will have a list of documentation or information which was sought by the police and this has been made known to the police.

ARBITRATOR JUSTICE MOSENEKE: But was it filed in court, it was?

ADV TEBOGO HUTAMO: That is my instruction yes.

ARBITRATOR JUSTICE MOSENEKE: Which is when one looks at it you don't see the customary stamp of the court hence I am asking the question for information.

5 Hence the question was this ever filed, for what purpose was it served on the police and so on.

ADV TEBOGO HUTAMO: It is indeed correct Justice, my instruction on that aspect is that when the matter was called on the 20th of September from the previous postponement of 16 August, that is when this statement was made available
10 together with the documents which we sought and where information or documents were not made available, an explanation was given.

ARBITRATOR JUSTICE MOSENEKE: I follow and what does the warrant of arrest got to do with all this? What are your instructions? Was there ever a warrant of arrest issued against Dr Kenoshi and if so, why?

15 **ADV TEBOGO HUTAMO**: I will have to take instructions on that aspect, I don't have full instructions. I will have to revert to my client with that aspect.

ARBITRATOR JUSTICE MOSENEKE: Because you see the statement purports to have been written out in order- look at the conclusion, I request that the warrant of arrest issued against me, be cancelled, so that in itself, requires some form of
20 explanation from the bar and evidence if what you say is disputed from the bar. So what do you propose to do about that?

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ADV TEBOGO HUTAMO: Justice if I can be given an opportunity to take proper instructions on that aspect, I should be able to respond properly. Perhaps if I may suggest that we adjourn, I am not sure if Justice will be amenable to us taking a break in order to clarify those aspects, so that I can be able to deal with them
5 comprehensively.

ARBITRATOR JUSTICE MOSENEKE: I am inclined to take a break. I don't want the General to spend 2 days here. We have asked him for a lot of work and he publically undertook to go and do it and do it properly, so I don't want to unduly have him here for a second day. Subject to Counsel's response, I am inclined to
10 adjourn. How much would you require Counsel, 15 minutes or 20 minutes?

ADV TEBOGO HUTAMO: 20 minutes should be able to give us proper time.

ARBITRATOR JUSTICE MOSENEKE: I am inclined to adjourn and we come back and you put the proposition to the witness.

ADV TEBOGO HUTAMO: Thank you Justice.

15 **ARBITRATOR JUSTICE MOSENEKE**: General are you available to continue after an adjournment of 20 minutes?

MAJOR GENERAL CHARLES JOHNSON: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: It is 5:10. We will resume at 5:30 and then you can put your propositions to the General, so that we can help him away and
20 start with a fresh witness tomorrow morning.

SESSION 4

ARBITRATOR JUSTICE MOSENEKE: Thank you, you may be seated. General you are under your previous oath, advocate Hutamo?

ADV. TEBOGO HUTAMO: I understand Justice.

5 **ARBITRATOR JUSTICE MOSENEKE**: Thank you.

ADV. TEBOGO HUTAMO: Thank you Justice. Justice, I have noted two issues which we had to take instructions. One, regarding the service of the statement. Then second, relating to the warrant of arrest.

ARBITRATOR JUSTICE MOSENEKE: Yes.

10 **ADV. TEBOGO HUTAMO**: And I will deal with them in turn.

ARBITRATOR JUSTICE MOSENEKE: Than you.

ADV. TEBOGO HUTAMO: Justice, as we are aware that on the 17th of August 2017, Dr. Genoshi was called upon to appear in court to provide certain documentation. At that hearing there was an affidavit which was deposed to by the
15 doctor, indicating that she was not in possession of the documents. And we have a copy of a document, which records service on the colonel, Col. Dithabo, where he had acknowledged receipt of the affidavit, which also bares the stamp of the South African Police Service....

ARBITRATOR JUSTICE MOSENEKE: Let me just get it right here. The affidavit
20 we have before us is of the 11th of September 2017.

ADV. TEBOGO HUTAMO: Indeed.

ARBITRATOR JUSTICE MOSENEKE: But you say that earlier than that the doctor was required to appear in court on the 17th of August

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ADV. TEBOGO HUTAMO:Pursuant to the subpoena.

ARBITRATOR JUSTICE MOSENEKE: Pursuant to the subpoena?

ADV. TEBOGO HUTAMO:Yes.

5 **ARBITRATOR JUSTICE MOSENEKE**: Very well. And did he make an affidavit
advocate Hutamo?

ADV. TEBOGO HUTAMO:Yes.

ARBITRATOR JUSTICE MOSENEKE: Did he make an affidavit before the one of
the 11th of September?

10 **ADV. TEBOGO HUTAMO**:Indeed so, which we will make an effort to make it
available. But what we have now is a document which proofs that it was indeed
served on the Colonel, and which bares all the details, and it was received on the
16th of August.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. TEBOGO HUTAMO:And after the receipt of the affidavit ...

15 **ARBITRATOR JUSTICE MOSENEKE**: Now, 16 August was receipt of what? Of
Dr. Genoshi's first affidavit?

ADV. TEBOGO HUTAMO:First affidavit.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV. TEBOGO HUTAMO:Prior to appearance in court on the 17th.

20 **ARBITRATOR JUSTICE MOSENEKE**: Yes.

ADV. TEBOGO HUTAMO:Then in light of what was contained in the affidavit, the
NPA, the prosecution, was not quite content or satisfied with the content. They
required more to be done with regards to the making of documents available.

ARBITRATOR JUSTICE MOSENEKE: They were not happy with Dr. Genoshi's
....

ADV. TEBOGO HUTAMO: Affidavit.

ARBITRATOR JUSTICE MOSENEKE: The content of Dr. Genoshi's affidavit?

5 **ADV. TEBOGO HUTAMO**: Indeed.

ARBITRATOR JUSTICE MOSENEKE: Ok.

ADV. TEBOGO HUTAMO: Which then, in order to ensure that there is compliance, through the discussion of the parties, the NPA found it necessary that a warrant of arrest be issued, so as to ensure that there is compliance with the request made.

10 The warrant was issued for purposes of ensuring that the documents were made available. So, my instruction was that that warrant was issued on the 17th of August by agreement between the parties, to ...

ARBITRATOR JUSTICE MOSENEKE: To ensure compliance or to ensure attendance?

15 **ADV. TEBOGO HUTAMO**: Through the discussion it was to ensure that there is compliance of what was required of the doctor. Failing which ... it will be given effect to. The warrant will be given effect to. So, that explains the last paragraph of the affidavit, which appears at paragraph 22 of ...

20 **ARBITRATOR JUSTICE MOSENEKE**: Isn't it strange that the warrant of arrest is issued in order to compel the doctor to provide information? Warrant of arrest is normally issued to secure attendance, not to compel answers.

ADV. TEBOGO HUTAMO: I do follow that Justice, but that is the information from the client with regards to what had actually occurred.

25 **ARBITRATOR JUSTICE MOSENEKE**: It was a warrant issued by a presiding officer? By a Magistrate?

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ADV. TEBOGO HUTAMO: I admit to understand so, yes. Through the request of the prosecutor.

ARBITRATOR JUSTICE MOSENEKE: There was no claim that Dr. Genoshi did not appear in the previous hearing? No?

5 **ADV. TEBOGO HUTAMO**: As I've said, the instruction is that, what was agreed between the parties was that in light of the content of the affidavit, in response to the request of documents, the prosecution wanted to ensure that there is proper compliance. And what the parties agreed, in order to give the assurance that indeed effort will be made on his part that is when it was agreed that the warrant be
10 issued.

ARBITRATOR JUSTICE MOSENEKE: On that account council, is that warrant a valid warrant in Law?

ADV. TEBOGO HUTAMO: Justice, I will not want to debate the validity of that warrant, as I have not seen it, but that is the instruction which I have, and in seeking
15 to explain why, in the affidavit, the doctor sought that such warrant be discharged.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. TEBOGO HUTAMO: And if I can just hand up the proof of service? It is NL
47.

ARBITRATOR JUSTICE MOSENEKE: But we know now there is proof of service
20 of the affidavit, the first affidavit?

ADV. TEBOGO HUTAMO: Yes.

ARBITRATOR JUSTICE MOSENEKE: On the 17th of August?

ADV. TEBOGO HUTAMO: It is NL 47 and the proof in fact appears at NL 48.

ARBITRATOR JUSTICE MOSENEKE: Yes. Who would have made endorsement
25 at the bottom of NL 48? Do you have a copy of NL 48 and NL 47 General?

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MAJ. GEN. CHARLES JOHNSON: I do have that.

ARBITRATOR JUSTICE MOSENEKE: You do have them, very well, thank you.

ARBITRATOR JUSTICE MOSENEKE: Council, who would have made the endorsement at the bottom of NL 48? Is it Lieutenant Colonel Dithabo?

5 **ADV. TEBOGO HUTAMO:**That is my instruction.

ARBITRATOR JUSTICE MOSENEKE: When served with this, then he wrote, I presume on the original also, that "...the information provided is not sufficient. Is it advisable for your client to avail himself in the court on the 19th of August 2017?"

ADV. TEBOGO HUTAMO:Indeed so Justice.

10 **ARBITRATOR JUSTICE MOSENEKE:** So the view of the Colonel was that the information provided in the affidavit of the 17th is inadequate and therefore the doctor has to appear in court on the 17th of August?

ADV. TEBOGO HUTAMO:It is indeed correct.

ARBITRATOR JUSTICE MOSENEKE: I see.

15 **ADV. TEBOGO HUTAMO:**Yes.

ARBITRATOR JUSTICE MOSENEKE: I understand that. You may proceed.

ADV. TEBOGO HUTAMO:And then pursuant to that arrangement having been made, the matter was then postponed to the 20th of September.

ARBITRATOR JUSTICE MOSENEKE: Yes.

20 **ADV. TEBOGO HUTAMO:**And then, it was during this appearance that this affidavit NL46...

ARBITRATOR JUSTICE MOSENEKE: Yes.

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ADV. TEBOGO HUTAMO: Was made available to the member of the Task Team, Lieutenant Colonel Dithabo. And it is the affidavit which enlisted the documents provided.

5 **ARBITRATOR JUSTICE MOSENEKE**: Yes. It was served on the Colonel with the view to satisfy the requirement or the demand for information?

ADV. TEBOGO HUTAMO: Indeed so.

ARBITRATOR JUSTICE MOSENEKE: And what happened to the case then? On the 20th of September? After the affidavit dated the 11th of September was served in appearance of the 20th. And what happened there?

10 **ADV. TEBOGO HUTAMO**: My instructions are that on the 20th of ... no sorry, the 18th, like, I beg your pardon Justice. The date is supposed to be the 18th ...

ARBITRATOR JUSTICE MOSENEKE: Of September?

ADV. TEBOGO HUTAMO: No, no, sorry. The affidavit was indeed provided on the 20th of September, and from the documents which were provided, there was ...

15 **ARBITRATOR JUSTICE MOSENEKE**: I don't understand that. Affidavit is, excuse me, the affidavit is deposed to on the 11th of September? It is attested, is it the 11th or the 17th?

ADV. TEBOGO HUTAMO: The 11th.

20 **ARBITRATOR JUSTICE MOSENEKE**: The 11th of September. And when was the appearance to be?

ADV. TEBOGO HUTAMO: The appearance was set for the 20th of September.

ARBITRATOR JUSTICE MOSENEKE: The 20th, and what happened on the 20th of September?

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ADV. TEBOGO HUTAMO: Then on the 20th of September, my instructions are that there were further documents, which were provided to the Colonel, and the arrangements ...

ARBITRATOR JUSTICE MOSENEKE: Other than those that was in the affidavit?

5 **ADV. TEBOGO HUTAMO**: Indeed so.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. TEBOGO HUTAMO: And the matter was subsequently postponed from the 20th of September, and it was postponed to the 18th of October.

ARBITRATOR JUSTICE MOSENEKE: Why?

10 **ADV. TEBOGO HUTAMO**: There were further documents which were requested, over and above what was provided.

ARBITRATOR JUSTICE MOSENEKE: That was even after the affidavit of the 11th of September, it was necessary to provide further documents, and for that reason the matter was postponed to the 18th of October?

15 **ADV. TEBOGO HUTAMO**: Indeed so. And then on the 18th of October another set of documents, which were requested, were provided to the Colonel. And in fact this time they were given to Colonel Dithabo, who is a member of the Task Team, in the company of Captain Madisha, and the prosecutor as well was present. The prosecutor by the name of Gizelle. Those documents were provided to them on the
20 18th of October.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. TEBOGO HUTAMO: And by agreement between the parties involved in the proceedings, it was agreed that the police will consider those documents, and consider if there are further documents which may be required. And to date that
25 indication has not yet been given.

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ARBITRATOR JUSTICE MOSENEKE: But the case was postponed then to which date?

ADV. TEBOGO HUTAMO: To the 6th of December.

5 **ARBITRATOR JUSTICE MOSENEKE**: 6 December. And why was the subpoena not set aside?

ADV. TEBOGO HUTAMO: In light of the further documents which were being made available from time to time.

ARBITRATOR JUSTICE MOSENEKE: So once subpoena was issued, and then there were all this sets of documents that were provided?

10 **ADV. TEBOGO HUTAMO**: Indeed so.

ARBITRATOR JUSTICE MOSENEKE: Yes, very well. Thank you for that. Subject to anybody contesting that, will need evidence, but, so what do you want to put to the Colonel now? I am sorry, to the General now.

ADV. TEBOGO HUTAMO: Thank you Justice.

15 **ARBITRATOR JUSTICE MOSENEKE**: Thank you for the information council.

ADV. TEBOGO HUTAMO: Thank you. Major General, I want to put it to you that despite you being the head of the task team, you have not been properly updated about the interaction between the Department and members of your Task Team. What is your response to that?

20 **MAJ. GEN. CHARLES JOHNSON**: Thank you Justice. That is not true. Let me put to the tribunal that I was briefed on all the court dates and the reasons. When, during the break I consulted with Colonel Dithabo and Captain Modishe who is present here. Our version is the following, that the 205 subpoena was served, the doctor had to provide the information, required information by the 17th of August,
25 or appear in court to provide the reasons why the documentation, the requested

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documentation was not provided. By the 17th of August we did not receive the requested information. The doctor did not appear in court, only the legal representative MNS Attorneys were present. Because there was non-compliance with the subpoena, and non-attendance at the court, a warrant of arrest was issued, but it was held over until the next court appearance which was the 20th of September.

We do not dispute the Lieutenant Colonel Dithabo received the document ELAH 47, and that it is his signature and his handwriting on ELAH 48. Now, on the 20th September there was still partial compliance with the documentation. The doctor was still not at court, only the legal representatives. It was then agreed that the matter be postponed until the 18th of October to provide the Department time to comply with our requests. Again there was partial compliance and the doctor was also not at court on the 18th. Upon mutual agreement the warrant of arrest was still not authorised for execution, but it stood over for the 6th of December because there was still not full compliance with our request.

ARBITRATOR JUSTICE MOSENEKE: So the warrant is still

MAJ. GEN. CHARLES JOHNSON: Valid.

ARBITRATOR JUSTICE MOSENEKE: Valid.

MAJ. GEN. CHARLES JOHNSON: Although it has not been authorised.

20 **ARBITRATOR JUSTICE MOSENEKE**: Yes.

MAJ. GEN. CHARLES JOHNSON: The agreement between the attorneys and Adv. Gizelle van der Westhuizen, who is representing, who is part of our team, who is representing the NPA, is that firstly there will be full compliance before the 6th of December. Failing which doctor Genoshi must appear on the 6th of December. And there was agreement that the doctor will be at court on the 6th of December. So, up until today Judge, Justice, there is not full compliance with our request. But I took note of the paragraph where the doctor proposes a reconciliation of what we have

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and what we don't have. We will take up that offer and see whether we can do it before the 6th of December.

ARBITRATOR JUSTICE MOSENEKE: Council? You have heard the response to your propositions?

5 **ADV. TEBOGO HUTAMO**: Indeed so.

ARBITRATOR JUSTICE MOSENEKE: And the reasons why the warrant was issued but held over to the next hearing. Any further questions from you?

10 **ADV. TEBOGO HUTAMO**: Major General, I put it to you that the officials, and in particular Dr. Genoshi has been making every effort to assist with regards to the documents which are required by the Police. Would you dispute that co-operation?

MAJ. GEN. CHARLES JOHNSON: I don't know what efforts the officials are putting in place. My view point is that there is not full compliance with our request.

15 **ADV. TEBOGO HUTAMO**: And the doctor has made it clear under oath that for any information which is outstanding, that will be made available. And as I have indicated earlier on, there has been documents which have been made available to you, and the arrangements which were made by the members of your Task Team, including the Prosecutor, who is a member of the Task Team, was that they will consider the documents made available to them, and consider if there is any further
20 documents required. And to date that indication has not been given. Will you dispute that arrangement?

MAJ. GEN. CHARLES JOHNSON: I don't agree that there was this arrangement between us and the Department to come together. What I am saying now is there is still not full compliance. Seeing that this affidavit was brought to my
25 attention today, I will do everything to see whether we can meet before the 6th of December, agree what, in writing, with signatures, as to what documentation we still

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need, and by when, before the 6th of December, the Department will provide with us, in line of paragraph 19 of this affidavit.

ARBITRATOR JUSTICE MOSENEKE: Yes, that will be helpful. Well, you mustn't drown in detail unduly. The question that was put was is it true that Dr. Genoshi provided the full documents that you asked from the Department? And the answer from the General was no. The next question was whether Dr. Genoshi said that he did, was he being untruthful? And the answer was yes, he was untruthful. That is where all this comes from. The General's position has always been, not all documents have been provided. Dr. Genoshi's position seems to be "I have given some documents." So the difference is that thing. Has he given all? The answer is no, and on this subpoena it shows that all information was given, at least *prima facie* council, unless you can argue otherwise. So, we should not lose focus. We should make sure all documents are provided. It is undesirable through warrants of arrests against high ranking officers, all around providing information that is vital to building up proper dockets for possible prosecution. You don't want to get unduly and overly side tracked by what we are about. We want to see those who might have committed offences being held criminally liable. So I hope that come the December date, the General has offered to do the recon earlier than that. It should be done and the information should be made available, so that we can build the Police and build proper dockets. So prosecution must pursue where it is due, without all of these co-ensured measures from one State Department to another. Is there anything else that you want to say or you want to ask in the light of that? In light of the offer by the General to go and look at what you have and say what he still needs.

25 **ADV. TEBOGO HUTAMO**: Well, in conclusion I just want to state to Major General that with regards to his concession that he is willing to have a look at the documents which are still outstanding, is in line with the version put to him, that on the 18th of October, documents were provided to members of the Task Team, and they are yet to give an indication if there are still any documents outstanding...

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ARBITRATOR JUSTICE MOSENEKE: Let the witness respond to that. Just put it to him. General, would you like to respond to that?

MAJ. GEN. CHARLES JOHNSON: General, I mean Justice, there was a mutual agreement between the State Prosecutor, the Attorneys and the
5 Investigation Team Leaders that there are still documents that was not provided and some of the documents that were provided does not fully comply with our requests. Therefore the Department was given a due date for 6 December. So, that is all that I can say relating to the statements or documentation that are still required.

ARBITRATOR JUSTICE MOSENEKE: Council, you want to pursue it any further?

10 **ADV. TEBOGO HUTAMO**: Thank you Justice. If I can just take instructions?

ARBITRATOR JUSTICE MOSENEKE: Ok.

ADV. TEBOGO HUTAMO: Those are the questions on behalf of the Government.

ARBITRATOR JUSTICE MOSENEKE: Do you know why they are, Dr. Genoshi cannot tell us if there is evidence about all of this?

15 **ADV. TEBOGO HUTAMO**: I will not be able to provide any answer.

ARBITRATOR JUSTICE MOSENEKE: For us to hear it from the Police, it express the challenges that (*inaudible*). I have to come back to you advocate. Thank you council, thank you very much. Re-examination?

ADV. NGUTSHANA: Justice, yes, just one point to re-emphasise. Major
20 General Johnson, you have been asked several times specifically by Adv. Groenewald as well as Hassim, that is with regards to Section 27, that there has been information placed at your disposal, and the answers coming from you were that if the evidence reveals some criminality then you will bring charges, or you will follow that evidence and so on. I just want to put this to you, this proposition to you,
25 that what basically what they had been asking of you is that information has been presented to you in the form of statements, you had been referred to page 11, 17

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and so on, in volume 3, and I want to indicate or take you through some specific passages just to demonstrate a point, so that you understand what the questions were all about. Specifically, let's go to volume 3 page 11-20? Are you there?

MAJ. GEN. CHARLES JOHNSON: Yes Justice.

5 **ADV. NGUTSHANA:** Yes. On 11-20, paragraph 11.3, that is the last sentence of the paragraph, which reads

ARBITRATOR JUSTICE MOSENEKE: Again, let's qualify the document please? What document are you putting to the witness?

10 **ADV. NGUTSHANA:** The document you had been referred to by Section 27 in cross-examination, it is on page, it starts from page 11-17, a letter by Section 27 dated 20 September 2016. Do you still recall this letter?

MAJ. GEN. CHARLES JOHNSON: I do Justice.

15 **ADV. NGUTSHANA:** Yes. On the very same letter, on page 11-20, paragraph 11.3, the last sentence of the letter, it reads: "The suspected cause of death is an overdose on (*inaudible*) health medication and so on." That is the part of the letter a seek to refer you to. Then the second letter appears on 11-71.

ARBITRATOR JUSTICE MOSENEKE: Can we ask the witness what he wants to say about that? Then you can take him down the document when you are done. What do you want General to do about what you have referred to him?

20 **ADV. NGUTSHANA:** What appears on 11.3 is that you were given information that this is the information we must follow, and from this information, if you follow it, the evidence would come to you. The evidence will show some form of criminality and this is what you had been requested to follow on. Do you get that?

25 **MAJ. GEN. CHARLES JOHNSON:** I get it Justice, but what I want to say is, I indicated that it is the first time that I saw this document, and that I will make work, if

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I get a copy of it, we will certainly look into this specific matter with the view of opening a criminal docket.

ADV. NGUTSHANA: The same appears on page 11-80 of the long letter of 24 pages, which starts at 11-71. You are referred to ...

5 **ARBITRATOR JUSTICE MOSENEKE:** Again, it is a letter from section 27, dated 28 March ...

ADV. NGUTSHANA: You had been cross-examined on this letter as well. You were referred to there on page 22, I mean paragraph 22, page 11-81, there are numerous passages where these instances are specifically referred to, and in the
10 middle of that paragraph it says: "A person who is not a health care worker of any sort, violates Section 39 if they make any formal medical assessments" and so on. That too is an instance of a violation of a statutory provision to which your attention is drawn specifically to attend to. As well as at page 11-82 of the same letter, and with reference to Section 17(2) of the National Health Act 61 of 2003. About a
15 person who falsifies any records by adding to, deleting and/or changing any information contained in that record as well. Your attention is drawn to that specific provision of the statutory provision. Then the last passage I want to draw your attention to, on the same letter, it appears on page 11-85, and this specifically refers to the MEC. I am sure you will recall being asked by Adv. Groenewald that they did
20 not hear you that you are investigating any case against the former MES or any other of the senior officials and so on. And specifically you were referred to there on the page that is paragraph 37, which reads specifically: "Section 17(2)(e) Create an offence for any person who wilfully furnishes a house or committee with any information or make a statement for it, which is false or misleading" and so on. So
25 there are numerous passages, I am not going to read and take you to each of them. They are there, so what I want to emphasise to you is that your answers that if evidence reveals that there is some form of criminality and so on, you will follow it. This is what you had been requested to specifically draw your attention to.

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MAJ. GEN. CHARLES JOHNSON: I agree Justice, and I took note of the passages. We will direct our investigation to this.

ARBITRATOR JUSTICE MOSENEKE: Yes. With what we have all collated here in this hearing, you may get a lot of what you want. There are bundles of documents here that have been arriving to 10 or 12 volumes, so there may well be a case to be made out for you accessing bundle of documents here that contains a variety of valuable material that would help your work as we go along. Some of the documents may very well disclose probable or *prima facie* commission of offences. So if you had made arrangements with these advocates here, to make available the documents we have, which are quite many, and your team could get more information than they might have had up to now, including the record, the record of proceedings. It is a public record, there is no reason why it shouldn't be available to the South African Police Services. Are you done councillor?

ADV. NGUTSHANA: Thank you Justice, I am done.

ARBITRATOR JUSTICE MOSENEKE: You are?

ADV. NGUTSHANA: Thank you.

ARBITRATOR JUSTICE MOSENEKE: Thank you ever so much. I would like to thank you council, both of you, as well as you General, for facilitating your appearance here. It was very important, and a valuable part of the evidence we need in the sense of closure that might develop. Because there can be closure on this if the crooks get away with it. If something has gone wrong, there are many levels of retribution to get that balance back. You may remember Lady Justice with the sword and the scale. And these levels might be arbitrations like this, reputable compensation, another level might be criminal responsibility where it is present. So, your work will be a very vital part of this whole healing process, and people are convinced that there are officers, high ranking officers, who are prepared to do their work, and to do it properly. It is your time to say your (*inaudible*), if anything at all Major General?

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MAJ. GEN. CHARLES JOHNSON: Thank you Justice. I just want to say thank you for the opportunity that were provided to us as the South African Police to come and put to the tribunal what we are doing, and what is our attitude towards this investigation. Because it seems to me that there is a perception, whether it is true
5 or not, that the Police is totally doing nothing, we are dragging our feet relating to the investigation of this serious matter. I will have to consider, based on the documents that is going to be provided to us from the tribunal, hopefully as soon as possible, that I should establish a sub-section of the team with more members that would then have a special focus on investigation of possible criminal matters based
10 on evidence that we are going to be provided with, so as to have a dual type of investigation accounting for the deaths, and accounting for possible criminal conduct relating to the deaths. So I think that would be a more strategic way of approaching the investigation. But thank you once again for allowing us to come and inform the relatives and the public about our seriousness relating to the
15 investigation of this matter. And thanks for the direction that was provided from you Justice and the council as to how it is expected of the Police to deal with these matters and the directions relating to possible criminal conduct of specific individuals. Thank you very much.

ARBITRATOR JUSTICE MOSENEKE: Thank you General. Once more, thank you
20 for being here. We much appreciate that. I am sure the families do too, and I think South Africa does too. We are going to adjourn till tomorrow. It will still be 09h30, so there will be no discount because of the late sitting. We will be sitting from 09h30 tomorrow and I have no doubt that all council involved have organised their witnesses for tomorrow. Once more thank you. We are adjourned.

25

HEARING ADJOURNS

